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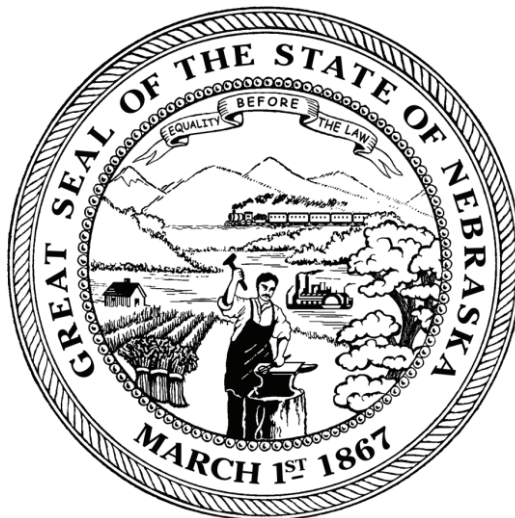


# REVISED STATUTES OF NEBRASKA

## 2016 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED  
BY THE  
REVISOR OF STATUTES

VOLUME 2  
CHAPTERS 48 TO 72, INCLUSIVE



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Revisor of Statutes

For the benefit of the  
State of Nebraska

**LABOR**

**CHAPTER 48**  
**LABOR**

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**ARTICLE 1**

**WORKERS' COMPENSATION**

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## **LABOR**

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PART I—COMPENSATION BY ACTION AT LAW,  
MODIFICATION OF REMEDIES**48-101.01 Mental injuries and mental illness; first responder; compensation; when.**

(1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder if such first responder:

(a) Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(3) For purposes of this section, first responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

**Source:** Laws 2010, LB780, § 1; Laws 2012, LB646, § 2.

**Note:** For applicability of this section, see section 48-1,111.

## PART II—ELECTIVE COMPENSATION

## (c) SCHEDULE OF COMPENSATION

**48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.**

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section, including any finance charge or late penalty.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk



management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensa-

tion court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the

employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

**Source:** Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1; Laws 2009, LB195, § 51; Laws 2011, LB152, § 1; Laws 2015, LB480, § 2.

**48-120.04 Diagnostic Related Group inpatient hospital fee schedule; trauma services inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.**

(1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For inpatient trauma discharges on or after January 1, 2012, the trauma services inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(4) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low-income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(d) Trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability;

(e) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent except for inpatient hospital trauma services; and

(f) Workers' Compensation Trauma Factor for inpatient hospital trauma services means the Current Medicare Factor for each hospital multiplied by one hundred sixty percent.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section. Claims for inpatient trauma services prior to January 1, 2012, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. Claims for inpatient trauma services on or after January 1, 2012, for Diagnostic Related Groups subject to the Diagnostic Related Group inpatient hospital fee schedule shall be reimbursed under the trauma services inpatient hospital fee schedule established in this section, except as otherwise provided in subdivision (1)(d) of section 48-120.

(6) The trauma services inpatient hospital fee schedule shall be established by the following methodology:

(a) The trauma services reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Trauma Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the trauma services reimbursement amount calculated in subdivision (6)(a) of this section multiplied by one and one-quarter;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the trauma services reimbursement amount calcu-

lated in subdivision (6)(a) of this section plus sixty-five percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the trauma services reimbursement amount calculated in subdivision (6)(a) of this section.

(7) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (7)(a) of this section.

(8) For charges for all other stays or services that are not reimbursed under the Diagnostic Related Group inpatient hospital fee schedule or the trauma services inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(9) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(10) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(11) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group, the number of claims for each Diagnostic Related Group that included trauma services, the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group, and the number of times billed charges exceeded the Stop-Loss Threshold amount for each trauma service.

(12) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers'

compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (10) of this section.

**Source:** Laws 2007, LB588, § 2; Laws 2009, LB630, § 2; Laws 2010, LB872, § 1; Laws 2011, LB152, § 2.

**48-122 Compensation; injuries causing death; amount and duration of payments; computation of wages; expenses of burial; alien dependents.**

(1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of injury, the compensation, subject to section 48-123, shall be not more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) Upon the death of an employee, resulting through personal injuries as defined in section 48-151, whether or not there are dependents entitled to compensation, the reasonable expenses of burial, not exceeding ten thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there are no dependents, then to his or her personal representative.

(4) Compensation under the Nebraska Workers' Compensation Act to alien dependents who are not residents of the United States shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5) The consul general, consul, vice consul general, or vice consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul general, consul, vice consul general, or vice consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee. Such consular officer, or his or her representative, residing in the State of Nebraska, shall have in behalf of such nonresident dependents, the exclusive right to adjust and settle all claims for compensation provided by the Nebraska Workers' Compen-



sation Act, and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

**Source:** Laws 1913, c. 198, § 22, p. 588; R.S.1913, § 3663; Laws 1917, c. 85, § 8, p. 205; Laws 1919, c. 91, § 3, p. 232; C.S.1922, § 3045; C.S.1929, § 48-122; Laws 1935, c. 57, § 40, p. 209; C.S.Supp.,1941, § 48-122; R.S.1943, § 48-122; Laws 1945, c. 112, § 2, p. 361; Laws 1949, c. 160, § 2, p. 406; Laws 1951, c. 152, § 2, p. 620; Laws 1953, c. 162, § 2, p. 509; Laws 1955, c. 186, § 2, p. 530; Laws 1957, c. 203, § 2, p. 713; Laws 1957, c. 204, § 2, p. 719; Laws 1959, c. 223, § 2, p. 787; Laws 1963, c. 284, § 2, p. 850; Laws 1963, c. 285, § 2, p. 858; Laws 1965, c. 279, § 2, p. 803; Laws 1967, c. 288, § 2, p. 786; Laws 1969, c. 393, § 2, p. 1381; Laws 1971, LB 320, § 2; Laws 1973, LB 193, § 2; Laws 1974, LB 710, § 2; Laws 1975, LB 198, § 2; Laws 1977, LB 275, § 2; Laws 1978, LB 446, § 2; Laws 1979, LB 114, § 2; Laws 1981, LB 234, § 1; Laws 1983, LB 158, § 2; Laws 1985, LB 608, § 2; Laws 1986, LB 811, § 39; Laws 1997, LB 853, § 1; Laws 2012, LB738, § 1.

**48-125 Compensation; method of payment; delay; appeal; attorney's fees; interest.**

(1)(a) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(2)(a) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers.

(b) If the employer files an appeal from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the Court of Appeals or Supreme Court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(c) If the employee files an appeal from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an appeal from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the Court of Appeals or Supreme Court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such appeal.

(d) A reasonable attorney's fee allowed pursuant to this subsection shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer. For any injury occurring prior to August 30, 2015, the interest rate shall be equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. For any injury occurring on or after August 30, 2015, the interest rate shall be equal to six percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of entry of the judgment. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

**Source:** Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws 1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB 360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4; Laws 2009, LB630, § 3; Laws 2011, LB151, § 1; Laws 2015, LB480, § 3.

#### **48-126.01 Wages or compensation rate; basis of computation.**

(1)(a) In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, or any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which military forces, law enforcement reserve force, or emergency management agency, organization, or team is organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, for injuries resulting in disability or death received in the performance of his or her duties as a



member of such military forces, reserve force, agency, organization, or team, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121.

(b) If a member or person under subdivision (1)(a) of this section is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01.

(c) If the wages received for the performance of duties as a member of such military forces, reserve force, agency, organization, or team exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, reserve force, agency, organization, or team.

(2) In determining the compensation rate to be paid any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation or any member of a volunteer emergency medical service, which fire department or emergency medical service is organized under the laws of the State of Nebraska, for injuries resulting in disability or death received in the performance of his or her duties as a member of such fire department or emergency medical service, it shall be deemed and assumed that his or her wages are in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01 or the wages received by such member from his or her regular employment, whichever is greater. Any member of such volunteer fire department or volunteer emergency medical service shall not lose his or her volunteer status under the Nebraska Workers' Compensation Act if such volunteer receives reimbursement for expenses, reasonable benefits, or a nominal fee, a nominal per call fee, a nominal per shift fee, or combination thereof. It shall be conclusively presumed that a fee is nominal if the fee does not exceed twenty percent of the amount that otherwise would be required to hire a permanent employee for the same services.

**Source:** Laws 1913, c. 198, § 26, p. 592; R.S.1913, § 3667; Laws 1917, c. 85, § 10, p. 208; C.S.1922, § 3049; Laws 1927, c. 39, § 2, p. 171; C.S.1929, § 48-126; Laws 1935, c. 57, § 39, p. 208; C.S.Supp.,1941, § 48-126; R.S.1943, § 48-126; Laws 1953, c. 163, § 1(2), p. 513; Laws 1955, c. 186, § 3, p. 532; Laws 1959, c. 224, § 1, p. 790; Laws 1961, c. 233, § 2, p. 691; Laws 1967, c. 289, § 2, p. 790; Laws 1969, c. 394, § 1, p. 1384; Laws 1973, LB 239, § 3; Laws 1973, LB 25, § 2; Laws 1976, LB 782, § 15; Laws 1986, LB 528, § 7; Laws 1996, LB 43, § 9; Laws 1997, LB 138, § 39; Laws 1999, LB 216, § 7; Laws 2014, LB961, § 10.

#### (e) SETTLEMENT AND PAYMENT OF COMPENSATION

**48-139 Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; filing of release; form; contents; payment; fees.**

(1)(a) Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for

death, permanent disability, or claimed permanent disability under the Nebraska Workers' Compensation Act shall be commuted to one or more lump-sum payments, such settlement shall be submitted to the Nebraska Workers' Compensation Court for approval as provided in subsection (2) of this section if:

(i) The employee is not represented by counsel;

(ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;

(iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or

(v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, and such other matters as may be required by the compensation court. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same. If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. Upon paying the amount approved by the compensation court, the employer (i) shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties, and (ii) shall be entitled to a duly executed release. Upon filing the release, the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.

(3) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court in accordance with this subsection that is signed and verified by the employee and the employee's attorney. The release shall be made on a form approved by the compensation court and shall contain a statement signed and verified by the employee that:

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

(i) The right to receive weekly disability benefits, both temporary and permanent;

(ii) The right to receive vocational rehabilitation services;

(iii) The right to receive future medical, surgical, and hospital services as provided in section 48-120, unless such services are specifically excluded from the release; and

(iv) The right to ask a judge of the compensation court to decide the parties' rights and obligations;

(b) The employee is not eligible for medicare, is not a current medicare beneficiary, and does not have a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(c) There are no medical, surgical, or hospital expenses incurred for treatment of the injury which have been paid by medicaid and not reimbursed to medicaid by the employer as part of the settlement; and

(d) There are no medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid after the settlement.

(4) A release filed with the compensation court in accordance with subsection (3) of this section shall be final and conclusive as to all rights waived in the release unless procured by fraud. Amounts to be paid by the employer to the employee pursuant to such release shall be paid within thirty days of filing the release with the compensation court. Fifty percent shall be added for payments owed to the employee if made after thirty days after the date the release is filed with the compensation court. Upon making payment owed by the employer as set forth in the release, such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release, and the court shall enter an order of dismissal with prejudice as to all rights waived in the release.

(5) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

**Source:** Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p. 199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-139; Laws 1951, c. 153, § 1, p. 623; Laws 1975, LB 187, § 4; Laws 1977, LB 126, § 3; Laws 1978, LB 649, § 3; Laws 1986, LB 811, § 57; Laws 1993, LB 757, § 10; Laws 2002, LB 417, § 3; Laws 2009, LB630, § 6; Laws 2014, LB961, § 11.

**48-145 Employers; compensation insurance required; exceptions; effect of failure to comply; self-insurer; payments required; deposit with State Treasurer; credited to General Fund.**

To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. Notwithstanding subdivision (1)(d) of this section, a professional employer organization shall not be eligible to self-insure its workers' compensation liability. The compensation court may by rule and regulation require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under subdivision (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document. The trustee of any trust created to satisfy the requirements of this section may invest the trust assets in the same manner authorized under subdivisions (1)(a) through (i) of section 30-3209 for corporate trustees holding retirement or pension funds for the benefit of employees or former employees of cities, villages, school districts, or governmental or political subdivisions, except that the trustee shall not invest trust assets into stocks, bonds, or other obligations of the trustor. If, as a result of such investments, the value of the trust assets is reduced below the acceptable trust amount required by the compensation court, then the trustor shall deposit additional trust assets to account for the shortfall.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The compensation court or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion. All money paid by a self-insurer under this subdivision shall be credited to the General Fund;

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents; and

(4) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to subdivision (1) of this section shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision (11) of section 48-115 and section 48-115.02 as generally provided in the act.

**Source:** Laws 1913, c. 198, § 46, p. 599; R.S.1913, § 3687; Laws 1917, c. 85, § 21, p. 215; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3069; C.S.1929, § 48-146; Laws 1935, c. 57, § 31, p. 202; C.S.Supp.,1941, § 48-146; R.S.1943, § 48-145; Laws 1957, c. 205, § 1, p. 723; Laws 1963, c. 286, § 1, p. 860; Laws 1971, LB 572, § 8; Laws 1986, LB 811, § 67; Laws 1988, LB 1146, § 1; Laws

1997, LB 474, § 4; Laws 1999, LB 216, § 9; Laws 2000, LB 1221, § 8; Laws 2005, LB 13, § 8; Laws 2005, LB 238, § 10; Laws 2010, LB579, § 16; Laws 2015, LB480, § 4.

**Cross References**

**Intergovernmental Risk Management Act**, see section 44-4301.

**48-145.01 Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.**

(1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and shall be personally liable jointly and severally with such employer for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such employer while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, the employer may be enjoined from doing business in this state until the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the



compensation court pursuant to subsection (2) of this section shall be in accordance with sections 48-182 and 48-185.

**Source:** Laws 1971, LB 572, § 18; Laws 1977, LB 40, § 272; Laws 1986, LB 811, § 68; Laws 1993, LB 121, § 283; Laws 1999, LB 331, § 1; Laws 2005, LB 13, § 9; Laws 2011, LB151, § 2.

### PART III—MISCELLANEOUS PROVISIONS

#### **48-148.01 Denial of compensation; false representation.**

No compensation shall be allowed if, at the time of or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment: (1) The employee knowingly and willfully made a false representation as to his or her physical or medical condition by acknowledging in writing that he or she is able to perform the essential functions of the job with or without reasonable accommodation based upon the employer's written job description; (2) the employer relied upon the false representation and the reliance was a substantial factor in the hiring; and (3) a causal connection existed between the false representation and the injury.

**Source:** Laws 2015, LB480, § 1.

### PART IV—NEBRASKA WORKERS' COMPENSATION COURT

#### **48-153 Judges; number; term; qualifications; continuance in office; prohibition on holding other office or pursuing other occupation.**

The Nebraska Workers' Compensation Court shall consist of seven judges. Judges holding office on August 30, 1981, shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on the first Thursday after the first Tuesday in January immediately following the first general election at which they are retained in office after August 30, 1981. Judge of the Nebraska Workers' Compensation Court shall include any person appointed to the office of judge of the Nebraska Workmen's Compensation Court prior to July 17, 1986, pursuant to Article V, section 21, of the Nebraska Constitution. Any person serving as a judge of the Nebraska Workmen's Compensation Court immediately prior to July 17, 1986, shall be a judge of the Nebraska Workers' Compensation Court. The right of judges of the compensation court to continue in office shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office thereafter shall be for six years beginning on the first Thursday after the first Tuesday in January immediately following their retention at such election. In case of a vacancy occurring in the Nebraska Workers' Compensation Court, the same shall be filled in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections 24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation, or removal for cause. No judge of the compensation court shall, during his or her tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his or her duties as such judge, or serve on or under any committee of any political party.

**Source:** Laws 1935, c. 57, § 2, p. 188; C.S.Supp.,1941, § 48-163; R.S. 1943, § 48-153; Laws 1945, c. 113, § 1, p. 363; Laws 1963, c.

288, § 1, p. 865; Laws 1965, c. 280, § 2, p. 806; Laws 1967, c. 292, § 2, p. 798; Laws 1975, LB 187, § 10; Laws 1978, LB 649, § 4; Laws 1979, LB 237, § 5; Laws 1981, LB 111, § 4; Laws 1983, LB 18, § 3; Laws 1986, LB 811, § 81; Laws 1988, LB 868, § 2; Laws 2011, LB151, § 3.

**48-155 Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.**

The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

**Source:** Laws 1935, c. 57, § 4, p. 189; C.S.Supp.,1941, § 48-165; R.S. 1943, § 48-155; Laws 1945, c. 113, § 2, p. 364; Laws 1959, c. 225, § 1, p. 791; Laws 1969, c. 396, § 1, p. 1386; Laws 1986, LB 811, § 84; Laws 1992, LB 360, § 15; Laws 2000, LB 1221, § 10; Laws 2005, LB 13, § 14; Laws 2011, LB151, § 4.

**48-156 Judges; quorum; powers.**

A majority of the judges of the Nebraska Workers' Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except when the statute or a rule adopted by the compensation court permits one judge thereof to act. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the compensation court, except that a majority vote of all the judges shall be required to adopt rules and regulations.

**Source:** Laws 1935, c. 57, § 5, p. 190; C.S.Supp.,1941, § 48-166; R.S. 1943, § 48-156; Laws 1945, c. 113, § 3, p. 364; Laws 1965, c. 280, § 3, p. 807; Laws 1983, LB 18, § 4; Laws 1986, LB 811, § 86; Laws 1992, LB 360, § 16; Laws 1999, LB 216, § 13; Laws 2011, LB151, § 5.

**48-162.03 Compensation court; motions; powers.**

(1) The Nebraska Workers' Compensation Court or any judge thereof may rule upon any motion addressed to the court by any party to a suit or proceeding, including, but not limited to, motions for summary judgment or other motions for judgment on the pleadings but not including motions for new trial. Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.



(2) Parties to a dispute which might be the subject of an action under the Nebraska Workers' Compensation Act may file a motion for an order regarding the dispute without first filing a petition.

(3) If notice of a motion is required, the notice shall be in writing and shall state: (a) The names of the parties to the action, proceeding, or dispute in which it is to be made; (b) the name of the judge before whom it is to be made; (c) the time and place of hearing; and (d) the nature and terms of the order or orders to be applied for. Notice shall be served a reasonable time before the hearing as provided in the rules of the compensation court.

**Source:** Laws 1997, LB 128, § 5; Laws 2013, LB141, § 1.

#### **48-166 Compensation court; annual report; contents.**

On or before January 1 of each year, the Nebraska Workers' Compensation Court shall submit electronically an annual report to the Clerk of the Legislature for the past fiscal year which shall include (1) pertinent information regarding settlements and awards made by the compensation court, (2) the causes of the accidents leading to the injuries for which the settlements and awards were made, (3) a statement of the total expense of the compensation court, (4) any other matters which the compensation court deems proper to include, and (5) any recommendations it may desire to make.

**Source:** Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-166; Laws 1945, c. 113, § 6, p. 366; Laws 1955, c. 231, § 7, p. 720; Laws 1986, LB 811, § 99; Laws 1999, LB 216, § 16; Laws 2013, LB222, § 16.

#### **48-167 Compensation court; record.**

The Nebraska Workers' Compensation Court shall keep and maintain a full and true record of all proceedings, documents, or papers ordered filed, rules and regulations, and decisions or orders.

**Source:** Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 205; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-167; Laws 1945, c. 113, § 7, p. 366; Laws 1986, LB 811, § 100; Laws 2011, LB151, § 6.

#### **48-170 Compensation court; orders; awards; when binding.**

Every order and award of the Nebraska Workers' Compensation Court shall be binding upon each party at interest unless an appeal has been filed with the compensation court within thirty days after the date of entry of the order or award.

**Source:** Laws 1917, c. 85, § 29, p. 222; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-170; Laws 1967, c. 294, § 1, p. 800; Laws 1975, LB 187, § 12; Laws 1986, LB 811, § 103; Laws 1992, LB 360, § 19; Laws 1999, LB 43, § 24; Laws 2011, LB151, § 7.

**48-175.01 Nonresident employer; service of process; manner of service; continuance; record.**

(1)(a) The performance of work in the State of Nebraska (i) by an employer, who is a nonresident of the State of Nebraska, (ii) by any resident employer who becomes a nonresident of this state after the occurrence of an injury to an employee, or (iii) by any agent of such an employer shall be deemed an appointment by such employer of the clerk of the Nebraska Workers' Compensation Court as a true and lawful attorney and agent upon whom may be served all legal processes in any action or proceeding against him or her, arising out of or under the provisions of the Nebraska Workers' Compensation Act, and such performance of work shall be a signification of the employer's agreement that any such process, which is so served in any action against him or her, shall be of the same legal force and validity as if served upon him or her personally within this state. The appointment of agent, thus made, shall not be revocable by death but shall continue and be binding upon the executor or administrator of such employer.

(b) For purposes of this section, performance of work shall include, but not be limited to, situations in which (i) the injury or injury resulting in death occurred within this state, (ii) the employment was principally localized within this state, or (iii) the contract of hire was made within this state.

(2) Service of such process, as referred to in subsection (1) of this section, shall be made by serving a copy thereof upon the clerk of the Nebraska Workers' Compensation Court, personally in his or her office or upon someone who, previous to such service, has been designated in writing by the clerk of the Nebraska Workers' Compensation Court as the person or one of the persons with whom such copy may be left for such service upon the clerk of the Nebraska Workers' Compensation Court, and such service shall be sufficient service upon the employer. In making such service, a copy of the petition and a copy of the process shall, within ten days after the date of service, be sent by the clerk of the Nebraska Workers' Compensation Court, or such person acting for him or her in his or her office, to the defendant by registered or certified mail addressed to the defendant's last-known address, and the defendant's return receipt and affidavit of the clerk of the Nebraska Workers' Compensation Court, or such person in his or her office acting for him or her, of compliance therewith shall be appended to such petition and filed in the office of the clerk of the Nebraska Workers' Compensation Court. The date of the mailing and the date of the receipt of the return card aforesaid shall be properly endorsed on such petition and filed by the clerk of the Nebraska Workers' Compensation Court, or someone acting for him or her.

(3) The Nebraska Workers' Compensation Court shall, on its own motion, order such continuance of answer day and trial date, as may to the compensation court seem necessary to afford the defendant reasonable opportunity to plead and to defend. No such continuance shall be for more than ninety days except for good cause shown.

(4) It shall be the duty of the clerk of the Nebraska Workers' Compensation Court to keep a record of all processes so served, in accordance with subsections (1) and (2) of this section, which record shall show the date of such service, and to so arrange and index such record as to make the same readily accessible and convenient for inspection.

**Source:** Laws 1957, c. 202, § 2, p. 708; Laws 1973, LB 150, § 2; Laws 1986, LB 811, § 108; Laws 2011, LB151, § 8.

**48-177 Hearing; judge; place; dismissal; procedure; manner of conducting hearings.**

(1) At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state.

(2) Any such cause may be dismissed without prejudice to a future action (a) by the plaintiff, if represented by legal counsel, before the final submission of the case to the compensation court or (b) by the compensation court upon a stipulation of the parties that a dispute between the parties no longer exists.

(3) Notwithstanding subsection (1) of this section, all nonevidentiary hearings, and any evidentiary hearings approved by the compensation court and by stipulation of the parties, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the state as ordered by the court and in a manner that ensures the preservation of an accurate record. Hearings conducted in this manner shall be consistent with the public's access to the courts.

**Source:** Laws 1935, c. 57, §§ 13, 15, pp. 193, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-177; Laws 1945, c. 113, § 8, p. 366; Laws 1949, c. 161, § 5, p. 413; Laws 1975, LB 97, § 8; Laws 1978, LB 649, § 8; Laws 1986, LB 811, § 109; Laws 1997, LB 128, § 6; Laws 2005, LB 13, § 29; Laws 2011, LB151, § 9.

**48-178 Hearing; judgment; when conclusive; record of proceedings; costs; payment.**

The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon appeal as hereinafter provided. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the employer's workers' compensation insurer. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

**Source:** Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-178; Laws 1945, c. 113, § 9, p. 367; Laws 1986, LB 811, § 110; Laws 1992, LB 360, § 20; Laws 2005, LB 238, § 14; Laws 2011, LB151, § 10.

**48-179 Repealed. Laws 2011, LB 151, § 20.****48-180 Findings, order, award, or judgment; modification; effect.**

The Nebraska Workers' Compensation Court may, on its own motion or on the motion of any party, modify or change its findings, order, award, or judgment at any time before appeal and within fourteen days after the date of such findings, order, award, or judgment. The time for appeal shall not be lengthened because of the modification or change unless the correction substantially changes the result of the award.

**Source:** Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-180; Laws 1986, LB 811, § 113; Laws 1992, LB 360, § 22; Laws 2011, LB151, § 11.

**48-181 Repealed. Laws 2011, LB 7, § 1.****48-182 Notice of appeal; bill of exceptions; requirements; waiver of payment; when; extension of time; filing of order.**

In case either party at interest refuses to accept any final order of the Nebraska Workers' Compensation Court, such party may, within thirty days thereafter, file with the compensation court a notice of appeal and at the same time the notice of appeal is filed, file with the compensation court a praecipe for a bill of exceptions. Within seven weeks from the date the notice of appeal is filed, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workers' Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensation court at the hearing, which transcribed copy when certified to by the person who made or transcribed the record shall constitute the bill of exceptions. The transcript and bill of exceptions shall be paid for by the party ordering the same, except that upon the affidavit of any claimant for workers' compensation, filed with or before the praecipe, that he or she is without means with which to pay and unable to secure such means, payment may, in the discretion of the compensation court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workers' Compensation Court within seven weeks from the date the notice of appeal is filed, the Supreme Court may, on the motion of any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workers' Compensation Court by the party requesting such extension within five days after the date of such order.

**Source:** Laws 1935, c. 57, §§ 13, 15, pp. 194, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-182; Laws 1967, c. 294, § 2,

p. 801; Laws 1971, LB 252, § 1; Laws 1973, LB 192, § 1; Laws 1975, LB 187, § 13; Laws 1986, LB 811, § 114; Laws 1986, LB 529, § 51; Laws 1991, LB 732, § 111; Laws 1992, LB 360, § 23; Laws 2011, LB151, § 12; Laws 2013, LB141, § 2.

**48-185 Appeal; procedure; judgment by Nebraska Workers' Compensation Court; effect; grounds for modification or reversal.**

Any appeal from the judgment of the Nebraska Workers' Compensation Court shall be prosecuted and the procedure, including the designation of parties, handling of costs and the amounts thereof, filing of briefs, certifying the opinion of the Supreme Court or decision of the Court of Appeals to the compensation court, handling of the bill of exceptions, and issuance of the mandate, shall be in accordance with the general laws of the state and procedures regulating appeals in actions at law from the district courts except as otherwise provided in section 48-182 and this section. The proceedings to obtain a reversal, vacation, or modification of judgments, awards, or final orders made by the compensation court shall be by filing in the office of the clerk of the Nebraska Workers' Compensation Court, within thirty days after the entry of such judgment, decree, or final order, a notice of appeal signed by the appellant or his or her attorney of record. No motion for a new trial shall be filed. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when such notice of appeal shall have been filed in the office of the clerk of the Nebraska Workers' Compensation Court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal shall be deemed jurisdictional. The clerk of the Nebraska Workers' Compensation Court shall forthwith forward a certified copy of such notice of appeal to the Clerk of the Supreme Court, whereupon the Clerk of the Supreme Court shall forthwith docket such appeal. Within thirty days after the date of filing of notice of appeal, the clerk of the Nebraska Workers' Compensation Court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The transcript shall contain the judgment, decree, or final order sought to be reversed, vacated, or modified and all pleadings filed with such clerk. Neither the form nor the substance of such transcript shall affect the jurisdiction of the appellate court. Such appeal shall be perfected within thirty days after the entry of judgment by the compensation court, the cause shall be advanced for argument before the appellate court, and the appellate court shall render its judgment and write an opinion, if any, in such cases as speedily as possible. The judgment made by the compensation court shall have the same force and effect as a jury verdict in a civil case. A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers, (2) the judgment, order, or award was procured by fraud, (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award, or (4) the findings of fact by the compensation court do not support the order or award.

**Source:** Laws 1935, c. 57, § 13, p. 195; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-185; Laws 1953, c. 165, § 1, p. 517; Laws 1957, c. 207, § 1, p. 726; Laws 1975, LB 187, § 14; Laws 1986, LB 811,

§ 115; Laws 1986, LB 529, § 52; Laws 1991, LB 732, § 112; Laws 1992, LB 360, § 24; Laws 1999, LB 43, § 25; Laws 2011, LB151, § 13.

**48-191 Time; how computed.**

Notwithstanding any more general or special law respecting the subject matter hereof, whenever the last day of the period within which a party to an action may file any document or pleading with the Nebraska Workers' Compensation Court, or take any other action with respect to a claim for compensation, falls on a Saturday, a Sunday, any day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or any day declared by statutory enactment or proclamation of the Governor to be a holiday, the next following day, which is not a Saturday, a Sunday, a day on which the compensation court is closed by order of the Chief Justice of the Supreme Court, or a day declared by such enactment or proclamation to be a holiday, shall be deemed to be the last day for filing any such document or pleading or taking any such other action with respect to a claim for compensation.

**Source:** Laws 1955, c. 187, § 1, p. 535; Laws 1986, LB 811, § 120; Laws 2003, LB 760, § 16; Laws 2011, LB151, § 14.

PART V—CLAIMS AGAINST THE STATE

**48-1,103 Workers' Compensation Claims Revolving Fund; established; deficiency; notify Legislature; investment.**

There is hereby established in the state treasury a Workers' Compensation Claims Revolving Fund, to be administered by the Risk Manager, from which all workers' compensation costs, including prevention and administration, shall be paid. The fund may also be used to pay the costs of administering the Risk Management Program. The fund shall receive deposits from assessments against state agencies charged by the Risk Manager to pay for workers' compensation costs. When the amount of money in the Workers' Compensation Claims Revolving Fund is not sufficient to pay any awards or judgments under sections 48-192 to 48-1,109, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the Workers' Compensation Claims Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1971, LB 390, § 12; Laws 1981, LB 273, § 12; Laws 1986, LB 811, § 130; Laws 1994, LB 1211, § 3; Laws 1995, LB 7, § 45; Laws 2011, LB378, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-1,104 Risk Manager; report; contents.**

The Risk Manager shall submit electronically a report to the Clerk of the Legislature by January 15 of each year, which report shall include the number of claims for which payments have been made, the amounts paid by categories of medical, hospital, compensation, and other costs separated by the agency and program or activity under which the claim arose. Each member of the



Legislature shall receive an electronic copy of such report by making a request for it to the Risk Manager.

**Source:** Laws 1971, LB 390, § 13; Laws 1972, LB 1334, § 3; Laws 1977, LB 399, § 1; Laws 1979, LB 322, § 16; Laws 1981, LB 545, § 52; Laws 1981, LB 273, § 13; Laws 2012, LB782, § 59.

#### PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

##### **48-1,110 Act, how cited.**

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

**Source:** Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3; Laws 2011, LB151, § 16; Laws 2015, LB480, § 5.

##### **48-1,111 Repealed. Laws 2013, LB21, § 2.**

##### **48-1,112 Laws 2011, LB151, changes; applicability.**

Cases pending before the Nebraska Workers' Compensation Court on August 27, 2011, in which a hearing on the merits has been held prior to such date shall not be affected by the changes made in sections 48-125, 48-145.01, 48-155, 48-156, 48-170, 48-178, 48-180, 48-182, and 48-185 by Laws 2011, LB151. Any cause of action not in suit on August 27, 2011, and any cause of action in suit in which a hearing on the merits has not been held prior to such date shall follow the procedures in such sections as amended by Laws 2011, LB151.

**Source:** Laws 2011, LB151, § 15.

#### PART VIII—COST-BENEFIT ANALYSIS

##### **48-1,118 Cost-benefit analysis and review of Laws 1993, LB 757; reports.**

On January 1, 1997, the Governor shall direct the Director of Insurance and the Commissioner of Labor to conduct and complete a cost-benefit analysis and a review of the effectiveness of the changes made by Laws 1993, LB 757, to control or reduce the cost of workers' compensation premiums. Information for the study may be elicited from interested persons and from the Nebraska Workers' Compensation Court. The director and the commissioner shall submit a report, which may include recommendations for further legislation, to the chairperson of the Business and Labor Committee of the Legislature, the Clerk of the Legislature, and the Governor by October 1, 1997. The Business and Labor Committee of the Legislature shall hold a public hearing on the study and shall submit a report to the Legislature by December 1, 1997. The Governor or the Legislature, by resolution, may require a similar study in 1999 and every two years thereafter. Any report submitted to the committee and the Clerk of the Legislature shall be submitted electronically.

**Source:** Laws 1993, LB 757, § 40; Laws 2012, LB782, § 60.

**ARTICLE 2**  
**GENERAL PROVISIONS**

## Section

- 48-201. Current or former employer; disclosure of information; immunity from civil liability; consent; form; period valid; applicability of section.
- 48-202. Public employer; applicant; disclosure of criminal record or history; limitation.
- 48-225. Veterans preference; terms, defined.
- 48-227. Veterans preference; examination or numerical scoring; notice and application; statement; veteran; duty; notice; contents.
- 48-238. Veterans preference in private employment; policy; notice to Commissioner of Labor; registry.

**48-201 Current or former employer; disclosure of information; immunity from civil liability; consent; form; period valid; applicability of section.**

(1)(a) A current or former employer may disclose the following information about a current or former employee's employment history to a prospective employer of the current or former employee upon receipt of written consent from the current or former employee:

- (i) Date and duration of employment;
- (ii) Pay rate and wage history on the date of receipt of written consent;
- (iii) Job description and duties;
- (iv) The most recent written performance evaluation prepared prior to the date of the request and provided to the employee during the course of his or her employment;
- (v) Attendance information;
- (vi) Results of drug or alcohol tests administered within one year prior to the request;
- (vii) Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee;
- (viii) Whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and
- (ix) Whether the employee is eligible for rehire.

(b) The current or former employer disclosing such information shall be presumed to be acting in good faith and shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing by a preponderance of the evidence that the information disclosed by the current or former employer was false, and the current or former employer had knowledge of its falsity or acted with malice or reckless disregard for the truth.

(2)(a) The consent required in subsection (1) of this section shall be on a separate form from the application form or, if included in the application form, shall be in bold letters and in larger typeface than the largest typeface in the text of the application form. The consent form shall state, at a minimum, language similar to the following:

I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer).

- (b) The consent must be signed and dated by the applicant.



(c) The consent will be valid for no longer than six months.

(3) This section shall also apply to any current or former employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this section.

(4)(a) This section does not require any prospective employer to request employment history on a prospective employee and does not require any current or former employer to disclose employment history to any prospective employer.

(b) Except as specifically amended in this section, the common law of this state remains unchanged as it relates to providing employment information on current and former employees.

(c) This section applies only to causes of action accruing on and after July 19, 2012.

(5) The immunity conferred by this section shall not apply when an employer discriminates or retaliates against an employee because the employee has exercised or is believed to have exercised any federal or state statutory right or undertaken any action encouraged by the public policy of this state.

**Source:** Laws 2012, LB959, § 1.

**48-202 Public employer; applicant; disclosure of criminal record or history; limitation.**

(1) Except as otherwise provided in this section, a public employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the applicant's criminal record or history, including any inquiry on any employment application, until the public employer has determined the applicant meets the minimum employment qualifications.

(2) This section does not apply to any law enforcement agency, to any position for which a public employer is required by federal or state law to conduct a criminal history record information check, or to any position for which federal or state law specifically disqualifies an applicant with a criminal background.

(3)(a) This section does not prevent a public employer that is a school district or educational service unit from requiring an applicant for employment to disclose an applicant's criminal record or history relating to sexual or physical abuse.

(b) This section does not prevent a public employer from preparing or delivering an employment application that conspicuously states that a criminal history record information check is required by federal law, state law, or the employer's policy.

(c) This section does not prevent a public employer from conducting a criminal history record information check after the public employer has determined that the applicant meets the minimum employment qualifications.

(4) For purposes of this section:

(a) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime, the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state, and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of

the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(b) Public employer means an agency or department of this state or of any political subdivision of this state.

**Source:** Laws 2014, LB907, § 12.

**48-225 Veterans preference; terms, defined.**

For purposes of sections 48-225 to 48-231:

(1) Veteran means:

(a) A person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions); or

(b) The spouse of a veteran who has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs;

(2) Full-time duty means duty during time of war or during a period recognized by the United States Department of Veterans Affairs as qualifying for veterans benefits administered by the department and that such duty from January 31, 1955, to February 28, 1961, exceeded one hundred eighty days unless lesser duty was the result of a service-connected or service-aggravated disability;

(3) Disabled veteran means an individual who has served on active duty in the armed forces of the United States, has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) therefrom, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department; and

(4) Preference eligible means any veteran as defined in this section.

**Source:** Laws 1969, c. 751, § 1, p. 2826; Laws 1991, LB 2, § 6; Laws 2001, LB 368, § 1; Laws 2005, LB 54, § 7; Laws 2014, LB588, § 2.

**48-227 Veterans preference; examination or numerical scoring; notice and application; statement; veteran; duty; notice; contents.**

(1) Veterans who obtain passing scores on all parts or phases of an examination or numerical scoring shall have five percent added to their passing score if a claim for such preference is made on the application. An additional five percent shall be added to the passing score or numerical scoring of any disabled veteran.

(2) When no examination or numerical scoring is used, the preference shall be given to the qualifying veteran if two or more equally qualified candidates are being considered for the position.

(3) All notices of positions of employment available for veterans preference and all applications for such positions by the state or its governmental subdivisions shall state that the position is subject to a veterans preference.

(4) A veteran desiring to use a veterans preference shall provide the hiring authority with a copy of the veteran's Department of Defense Form 214, also known as the DD Form 214. A spouse of a veteran desiring to use a veterans preference shall provide the hiring authority with a copy of the veteran's Department of Defense Form 214, a copy of the veteran's disability verification from the United States Department of Veterans Affairs demonstrating a one hundred percent permanent disability rating, and proof of marriage to the veteran. Any marriage claimed for veteran preference must be valid under Nebraska law.

(5) Within thirty days after filling a position, veterans who have applied and are not hired shall be notified by regular mail, electronic mail, telephone call, or personal service that they have not been hired. Such notice also shall advise the veteran of any administrative appeal available.

**Source:** Laws 1969, c. 751, § 3, p. 2827; Laws 1997, LB 5, § 2; Laws 2005, LB 54, § 8; Laws 2014, LB588, § 3.

**48-238 Veterans preference in private employment; policy; notice to Commissioner of Labor; registry.**

(1) For purposes of this section:

(a) Private employer means a sole proprietorship, a corporation, a partnership, an association, a limited liability company, or any other entity with one or more employees;

(b) Veteran means (i) a person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), or (ii) the spouse of a veteran who (A) has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs or (B) was killed in hostile action; and

(c) Voluntary veterans preference employment policy means a private employer's voluntary preference for hiring and promoting a veteran over another equally qualified applicant or employee.

(2) A private employer may adopt a voluntary veterans preference employment policy. Such policy shall be in writing and applied uniformly to decisions regarding hiring and promotion.

(3) If a private employer offers a voluntary veterans preference employment policy, a veteran desiring to use such policy shall provide the private employer with a copy of the veteran's Department of Defense Form 214, also known as the DD Form 214, or its successor form. A spouse of a veteran desiring to use such preference shall provide the private employer with a copy of the veteran's Department of Defense Form 214 or its successor form, proof of marriage to the veteran, and either (a) a copy of the veteran's disability verification from the United States Department of Veterans Affairs demonstrating a one hundred percent permanent disability rating or (b) a copy of the veteran's Department of Defense Form 1300 or its successor form documenting that the veteran was killed in hostile action.

(4) If a private employer implements a voluntary veterans preference employment policy, it shall notify the Commissioner of Labor of such policy. The commissioner shall use the information to maintain a registry of the private

employers that have a voluntary veterans preference employment policy in Nebraska.

(5) A voluntary veterans preference employment policy shall not be considered a violation of any state or local equal employment opportunity law including the Nebraska Fair Employment Practice Act.

**Source:** Laws 2015, LB272, § 1.

**Cross References**

Nebraska Fair Employment Practice Act, see section 48-1125.

**ARTICLE 4  
HEALTH AND SAFETY REGULATIONS**

**Section**

48-436. Terms, defined.

48-437. High voltage lines; prohibited acts; penalty.

48-438. High voltage lines; tools, equipment, materials, or buildings; operation, movement, or erection; use; conditions.

48-442. Violations; penalty.

**48-436 Terms, defined.**

For purposes of sections 48-436 to 48-442, unless the context otherwise requires:

(1) High voltage means a voltage in excess of six hundred volts, measured between conductors, or measured between the conductor and the ground; and

(2) Authorized and qualified persons includes employees of any electric utility, public power district, or public power and irrigation district with respect to the electrical systems of such utilities, employees of communications utilities, common carriers engaged in interstate commerce, state, county, or municipal agencies with respect to work relating to their facilities on the poles or structures of an electric utility or railway transportation system, employees of a railway transportation system or a metropolitan utilities district engaged in the normal operation of such system, and employees of a contractor with respect to work under his or her supervision when such work is being performed under contract for, or as an agent of, the owner of the above utilities, companies, or agencies, so long as all such persons meet the requirements for working near overhead high voltage conductors as provided in 29 C.F.R. 1910.269(a)(2)(ii) through 1910.269(a)(3), as such regulations existed on July 19, 2012.

**Source:** Laws 1969, c. 390, § 1, p. 1370; Laws 2012, LB997, § 1.

**48-437 High voltage lines; prohibited acts; penalty.**

(1) No person, firm, or corporation, or agent of such person, firm, or corporation, shall require or permit any employee, except an authorized and qualified person, to perform and no person, except an authorized and qualified person, shall perform any function within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442; or enter upon any land, building, or other premises, and there to engage in any excavation, demolition, construction, repair, or other operations, or to erect, install, operate, or store in or upon such premises any tools, machinery, equipment, materials, or structures, including house-moving, well-drilling, pile-driving, or

hoisting equipment, within the distances from overhead high voltage conductors prohibited by sections 48-436 to 48-442, unless and until danger from accidental contact with such high voltage conductors has been effectively guarded against in the manner prescribed in sections 48-436 to 48-442.

(2)(a) No person except an authorized and qualified person shall manipulate overhead high voltage conductors or other components, including the poles and other structures, of an electric utility. Under no circumstances shall an authorized and qualified person work on the electrical system of an electric utility that he or she is not employed by unless written authorization has been obtained from such electric utility. This subsection shall not be construed to apply to activities performed by an authorized and qualified person employed by an electric utility on the electrical system of another electric utility when the nonowning or nonoperating electric utility has a written agreement with the owning and operating electric utility (i) providing for the joint use of or interconnection of the electrical systems of both the electric utilities or (ii) approving authorized and qualified persons employed by the nonowning or nonoperating electric utility to work on the electrical system of the owning or operating electric utility on an ongoing basis.

(b) Any person, firm, or corporation, or any employee thereof, violating any provisions of this subsection shall be guilty of a Class II misdemeanor.

**Source:** Laws 1969, c. 390, § 2, p. 1371; Laws 2012, LB997, § 2; Laws 2016, LB973, § 1.

Effective date July 21, 2016.

**48-438 High voltage lines; tools, equipment, materials, or buildings; operation, movement, or erection; use; conditions.**

(1) Except as provided in subsections (2) and (3) of this section, the operation or erection of any tools, machinery, or equipment, or any part thereof capable of vertical, lateral, or swinging motion, or the handling or storage of any supplies, materials, or apparatus or the moving of any house or other building, or any part thereof, under, over, by, or near overhead high voltage conductors, shall be prohibited if, at any time during such operation or other manipulation, it is possible to bring such equipment, tools, materials, building, or any part thereof within ten feet of such overhead high voltage conductors, except where such high voltage conductors have been effectively guarded against danger from accidental contact, by any of the following:

(a) Erection of mechanical barriers to prevent physical contact with high voltage conductors;

(b) Deenergizing of the high voltage conductors and grounding where necessary; or

(c) Temporary relocation of overhead high voltage conductors.

(2) The minimum distance required by this section for cranes or other boom type equipment in transit with no load and with raiseable portions lowered shall be four feet.

(3) Nothing in sections 48-436 to 48-442 shall prohibit the moving of general farm equipment under high voltage conductors where clearances required by sections 48-436 to 48-442 are maintained.

(4) The activities performed as described in subdivisions (1)(a), (b), and (c) of this section shall be performed only by the owner or operator of the high

voltage conductors unless written authorization has been obtained from such owner or operator. This subsection shall not be construed to apply to activities performed by an electric utility on high voltage conductors of another electric utility when the electric utilities have a written agreement (a) providing for joint use of poles or structures supporting the high voltage conductors of the electric utilities or (b) approving the nonowning electric utility's performance of the activities described in subdivisions (1)(a), (b), and (c) of this section on an ongoing basis on the owning or operating electric utility's high voltage conductors.

**Source:** Laws 1969, c. 390, § 3, p. 1371; Laws 2012, LB997, § 3.

**48-442 Violations; penalty.**

Except as provided in subdivision (2)(b) of section 48-437, any person, firm, or corporation, or any employee thereof, violating any provisions of sections 48-436 to 48-442 shall be guilty of a Class V misdemeanor. Each day's failure to comply with any of the provisions of sections 48-436 to 48-442 shall constitute a separate violation.

**Source:** Laws 1969, c. 390, § 7, p. 1373; Laws 1977, LB 40, § 287; Laws 2016, LB973, § 2.  
Effective date July 21, 2016.

**ARTICLE 6**

**EMPLOYMENT SECURITY**

Section

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## Section

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- 48-681. Short-time compensation; charged to employer's experience account.
- 48-682. Short-time compensation; when considered exhaustee.
- 48-683. Short-time compensation program; department; funding; report.

**48-601 Act, how cited.**

Sections 48-601 to 48-683 shall be known and may be cited as the Employment Security Law.

**Source:** Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp., 1941, § 48-701; R.S. 1943, § 48-601; Laws 1949, c. 163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB265, § 3; Laws 2010, LB1020, § 1; Laws 2014, LB961, § 12.

**48-602 Terms, defined.**

For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that if the individual is not monetarily eligible for unemployment benefits as determined pursuant to subdivision (5) of section 48-627 based upon wages paid during the first four of the five most recently completed calendar quarters, the department shall make a redetermination of monetary eligibility

based upon an alternative base period which consists of the last four completed calendar quarters immediately preceding the first day of the claimant's benefit year;

(2) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

(6) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;

(7) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;

(8) Commissioner means the Commissioner of Labor;

(9) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(10) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(11) Department means the Department of Labor;

(12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(13) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(14) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;

(15) Institution of higher education means an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c)



provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work means employment for employers;

(17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

(18) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

(20) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(21) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on January 1, 2015, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. Wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which

are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on January 1, 2015, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on January 1, 2015; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(33) Worksite employee has the same meaning as the term covered employee in section 48-2702.

**Source:** Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp.,1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S.1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB265, § 4; Laws 2007, LB296, § 216; Laws 2010, LB579, § 20; Laws 2010, LB1020, § 2; Laws 2015, LB271, § 1.

#### **48-603 Employer, defined.**

As used in the Employment Security Law, unless the context clearly requires otherwise, employer shall mean:

(1) Any individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which for some portion of a day but not necessarily simultaneously in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year, and for the purpose of this definition, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were employed in each such day; all individuals performing services for any employer of any person in this state, who maintains two or more separate establishments within this state, shall be deemed to be employed by a single employer; any artifice or device, including any contract or subcontract, by an employer for the performance of work, which is a part of such employer's usual trade, occupation, profession, or business, entered into for the purpose or with the intent of evading the application of this section to such employer, is hereby prohibited and declared to be unlawful;

(2) Any employer of any person in this state who in any calendar quarter in either the current or preceding calendar year has paid wages for employment in the total sum of fifteen hundred dollars or more;

(3) Any individual or employer of any person in this state which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer which, at the time of such acquisition, was an employer subject to the Employment Security Law;

(4) Any employer of any person in this state, which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer of any person in this state, not an employer subject to such law, and which, if subsequent to such acquisition it were treated as a single unit with such other employer, would be an employer under subdivision (1) or (2) of this section;

(5) Any employer of any person in this state which, having become an employer under any provision of the Employment Security Law and which has not, under section 48-661, ceased to be an employer subject to such law;

(6) For the effective period of its election pursuant to section 48-661, any other employer of any person in this state who has elected to become fully subject to the Employment Security Law;

(7) Any employer of any person in this state not an employer by reason of any other subdivision of this section (a) for which services in employment are or were performed with respect to which such employer is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or (b) which, as a condition for approval of the Employment Security Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer under the Employment Security Law;

(8) The state or any political subdivision thereof and any instrumentality of any one or more of the foregoing;

(9) Any organization for which service in employment as defined in subdivision (4)(b) of section 48-604 is performed;

(10) Any individual or employing unit for which service in employment as defined in subdivision (4)(c) of section 48-604 is performed;

(11) Any individual or employing unit for which service in employment as defined in subdivision (4)(d) of section 48-604 is performed; and

(12)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivision (1) or (10) of this section, the wages earned or the employment of an employee performing domestic service shall not be taken into account; and

(b) In determining whether or not an employing unit for which agricultural labor is also performed is an employer under subdivision (11) of this section, the wages earned or the employment of an employee performing services in agricultural labor shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subdivision (1) of this section.

**Source:** Laws 1937, c. 108, § 2, p. 371; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 374; C.S.Supp., 1941, § 48-702; R.S. 1943, § 48-603; Laws 1945, c. 114, § 1, p. 369; Laws 1955, c. 190, § 1, p. 538; Laws 1971, LB 651, § 2; Laws 1977, LB 509, § 2; Laws 1985, LB 339, § 3; Laws 1993, LB 121, § 290; Laws 2015, LB271, § 2.

**48-603.01 Indian tribes; applicability of Employment Security Law.**

(1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on January 1, 2015, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on January 1, 2015, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Subdivision (8) of section 48-628 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in subdivision (7) of section 48-649 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:

(i) Execute and file with the commissioner a surety bond approved by the commissioner; or

(ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(5)(a)(i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision



(5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(b)(i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.

(ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on January 1, 2015;

(b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.

(7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

(8) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days after a final notice of delinquency, the commissioner shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

**Source:** Laws 2001, LB 192, § 2; Laws 2003, LB 199, § 1; Laws 2005, LB 739, § 4; Laws 2015, LB271, § 3.

#### **48-604 Employment, defined.**

As used in the Employment Security Law, unless the context otherwise requires, employment shall mean:

(1) Any service performed, including service in interstate commerce, for wages under a contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be

deemed to be localized within a state if (i) the service is performed entirely within such state or (ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to the Employment Security Law if the commissioner approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to such law;

(b) Services of an individual wherever performed within the United States or Canada if (i) such service is not covered under the employment compensation law of any other state or Canada and (ii) the place from which the service is directed or controlled is in this state;

(c)(i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business in the United States is located in this state;

(B) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; the employer is a corporation or limited liability company which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of subdivisions (A) and (B) of this subdivision are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the laws of this state.

(ii) American employer, for the purposes of this subdivision, shall mean: (A) An individual who is a resident of the United States; (B) a partnership if two-thirds or more of the partners are residents of the United States; (C) a trust if all the trustees are residents of the United States; or (D) a corporation or limited liability company organized under the laws of the United States or of any state.

(iii) The term United States for the purpose of this section includes the states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico;

(4)(a) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or

more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(7), and is not otherwise excluded under this section;

(b) Service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met: (i) The service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(8), and is not otherwise excluded under this section; and (ii) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c)(i) Service performed by an individual in agricultural labor as defined in subdivision (6)(a) of this section when such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(ii) For purposes of this subdivision:

(A) Any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, 29 U.S.C. 1801 et seq.; substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and such individual is not an employee of such other person within the meaning of any other provisions of this section;

(B) In case any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision (A) of this subdivision, such other person and not the crew leader shall be treated as the employer of such individual and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person; and

(C) The term crew leader shall mean an individual who furnishes individuals to perform service in agricultural labor for any other person, pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them, and has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person; and

(d) Service performed by an individual in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or

more in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages, including wages received under a contract of hire, shall be deemed to be employment unless it is shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

(a) Agricultural labor, except as provided in subdivision (4)(c) of this section, including all services performed:

(i) On a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife;

(ii) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the federal Agricultural Marketing Act, as amended, 12 U.S.C. 1141j, in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or (B) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (A) of this subdivision, but only if such operators produced more than one-half of the commodity with respect to which such service is performed. Subdivisions (A) and (B) of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, green-

houses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(b) Domestic service, except as provided in subdivision (4)(d) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under subdivision (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

(d) Service performed by an individual in the employ of his or her son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

(e) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the Employment Security Law shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, except that if this state is not certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code as defined in section 49-801.01, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected;

(f) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body or a member of the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (v) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

(g) For the purposes of subdivisions (4)(a) and (4)(b) of this section, service performed:

(i) In the employ of (A) a church or convention or association of churches or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of the duties required by such order;

(iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(iv) As part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(v) By an inmate of a custodial or penal institution;

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;

(i) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01, other than an organization described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01, or under section 521 thereof, if the remuneration for such service is less than fifty dollars;

(j) Service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled, regularly attending classes at, and working for such school, college, or university pursuant to a financial assistance arrangement with such school, college, or university or (ii) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that (A) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and (B) such employment will not be covered by any program of unemployment insurance;

(k) Service performed as a student nurse in the employ of a hospital or nurses training school by an individual who is enrolled and is regularly attending classes in a nurses training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(l) Service performed by an individual as a real estate salesperson, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission;

(m) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(n) Service performed by an individual in the sale, delivery, or distribution of newspapers or magazines under a written contract in which (i) the individual acknowledges that the individual performing the service and the service are not covered and (ii) the newspapers and magazines are sold by him or her at a fixed price with his or her compensation being based on the retention of the



excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(o) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers;

(p) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(q) Service performed for a motor carrier, as defined in 49 U.S.C. 13102 or section 75-302, as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease, with the motor carrier as lessee, executed pursuant to 49 C.F.R. part 376, Title 291, Chapter 3, as amended, of the rules and regulations of the Public Service Commission, or the rules and regulations of the Division of Motor Carrier Services. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee;

(r) Service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual;

(s) Service performed by an individual as a volunteer research subject who is paid on a per study basis for scientific, medical, or drug-related testing for any organization other than one described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 or any governmental entity;

(t) Service performed by a direct seller if:

(i) Such person is engaged in sales primarily in person and is:

(A) Engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment;

(B) Engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment; or

(C) Engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(ii) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subdivision (t)(i) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are

performed and the contract provides that the person will not be treated as an employee for federal and state tax purposes. Sales by a person whose business is conducted primarily by telephone or any other form of electronic sales or solicitation is not service performed by a direct seller under this subdivision;

(u) Service performed by an individual who is a participant in the National and Community Service State Grant Program, also known as AmeriCorps, because a participant is not considered an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service pursuant to 42 U.S.C. 12511(30)(B); and

(v) Service performed at a penal or custodial institution by a person committed to a penal or custodial institution;

(7) If the services performed during one-half or more of any pay period by an individual for the person employing him or her constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for the person employing him or her do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision, the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him or her. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person employing him or her when any of such service is excepted by subdivision (6)(h) of this section; and

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, as amended, is required to be covered under the Employment Security Law.

**Source:** Laws 1937, c. 108, § 2, p. 372; Laws 1939, c. 56, § 1, p. 230; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 375; C.S.Supp., 1941, § 48-702; R.S. 1943, § 48-604; Laws 1945, c. 115, § 1, p. 376; Laws 1947, c. 175, § 2, p. 566; Laws 1953, c. 167, § 3, p. 523; Laws 1959, c. 228, § 1, p. 795; Laws 1961, c. 238, § 2, p. 704; Laws 1971, LB 651, § 3; Laws 1972, LB 1392, § 2; Laws 1977, LB 509, § 3; Laws 1979, LB 581, § 2; Laws 1983, LB 248, § 2; Laws 1983, LB 319, § 1; Laws 1984, LB 745, § 1; Laws 1985, LB 339, § 4; Laws 1986, LB 799, § 1; Laws 1993, LB 121, § 291; Laws 1994, LB 1337, § 3; Laws 1995, LB 424, § 1; Laws 1995, LB 574, § 52; Laws 1997, LB 79, § 1; Laws 1997, LB 129, § 1; Laws 1997, LB 130, § 1; Laws 1999, LB 168, § 2; Laws 2000, LB 953, § 1; Laws 2001, LB 387, § 1; Laws 2003, LB 199, § 2; Laws 2011, LB261, § 1; Laws 2016, LB830, § 1.

Effective date July 21, 2016.

**48-605 Commissioner; salary.**

The commissioner, for his or her services with respect to the administration of the Employment Security Law, shall receive the salary of the commissioner as set out in section 81-103.

**Source:** Laws 1937, c. 108, § 10, p. 389; Laws 1939, c. 56, § 15, p. 254; Laws 1941, c. 94, § 15, p. 401; C.S.Supp.,1941, § 48-710; R.S. 1943, § 48-605; Laws 1947, c. 175, § 3, p. 572; Laws 1949, c. 163, § 3, p. 420; Laws 1961, c. 239, § 1, p. 712; Laws 1984, LB 747, § 1; Laws 1985, LB 339, § 5; Laws 2015, LB271, § 4.

**48-606 Commissioner; duties; powers; annual report; schedule of fees.**

(1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end if the same are consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding fiscal year and shall make such recommendations for amendments to such law as he or she deems proper. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Such information and recommendations submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such information by making a request for it to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

**Source:** Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c. 167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979,

LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5; Laws 2012, LB782, § 61.

**48-621 Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.**

(1) The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each fund shall be maintained as a separate and distinct account in all respects, as follows:

(a) There is hereby created in the state treasury a special fund to be known as the Employment Security Administration Fund. All money credited to this fund is hereby appropriated and made available to the Commissioner of Labor. All money in this fund shall be expended solely for the purposes and in the amounts found necessary as defined by the specific federal programs, state statutes, and contract obligations for the proper and efficient administration of all programs of the Department of Labor. The fund shall consist of all money appropriated by this state and all money received from the United States of America or any agency thereof, including the Department of Labor and the Railroad Retirement Board, or from any other source for such purpose. Money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from money in such fund, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of such programs shall also be credited to this fund. All money in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund, except balances of money therein appropriated from the General Fund of this state, shall not lapse at any time but shall be continuously available to the commissioner for expenditure consistent with the Employment Security Law. Any money in the Employment Security Administration Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act; and

(b) There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent 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 money collected under section 48-655 as interest on delinquent contributions, less refunds, shall be credited to this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner which would permit its substitution for or a corresponding reduction in federal funds which would in the absence of such money be available to finance expenditures for the administration of the unemployment insurance law, but nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have

been duly requested but not yet received, subject to the charging of such expenditures against such federal funds when received. The money in this fund may be used by the Commissioner of Labor only as follows:

(i) To replace within a reasonable time any money received by this state pursuant to section 302 of the federal Social Security Act, as amended, and required to be paid under section 48-622;

(ii) To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the Secretary of Labor of the United States and, for this purpose, no expenditures shall be made from this fund except on written authorization by the Governor at the request of the Commissioner of Labor; and

(iii) To be transferred to the Job Training Cash Fund.

(2)(a) Money credited to the account of this state in the Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of the Employment Security Law and public employment offices. Such money may be requisitioned pursuant to section 48-619 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of the Employment Security Law and public employment offices but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(i) The period within which such money may be obligated is limited to a period ending not more than two years after the effective date of the appropriation law; and

(ii) The amount which may be obligated is limited to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to the Employment Security Law and charged against the amounts transferred to the account of this state.

(b) For purposes of subdivision (2)(a)(ii) of this section, the amounts obligated under an appropriation for the administrative purposes described in such subdivision shall be charged against transferred amounts at the exact time the obligation is entered into.

(c) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(d) Money appropriated as provided in this subsection for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be credited to the Employment Security Administration Fund from which such payments shall be made. Money so credited shall, until expended, remain a part of the Employment Security Administration Fund and, if it will not be immedi-

ately expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(e) Notwithstanding subdivision (2)(a) of this section, money credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the Legislature.

(3) There is hereby appropriated out of the funds made available to this state in federal fiscal year 2002 under section 903(d) of the federal Social Security Act, as amended, the sum of \$6,800,484, or so much thereof as may be necessary, to be used, under the direction of the Department of Labor, for the administration of the Employment Security Law and public employment offices. The expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Reed Act distributions appropriated pursuant to this subsection may be amortized with federal grant funds provided pursuant to Title III of the federal Social Security Act and the federal Wagner-Peyser Act for the purpose of administering the state unemployment compensation and employment service programs to the extent allowed under such acts and the regulations adopted pursuant thereto. Except as specifically provided in this subsection, all provisions of subsection (2) of this section, except subdivision (2)(a)(i) of this section, shall apply to this appropriation. The commissioner shall submit an annual report to the Governor, the Speaker of the Legislature, and the chairpersons of the Appropriations Committee and the Business and Labor Committee of the Legislature describing expenditures made pursuant to this subsection. The report submitted to the committees and the Speaker of the Legislature shall be submitted electronically.

**Source:** Laws 1937, c. 108, § 13, p. 397; Laws 1939, c. 56, § 10, p. 248; Laws 1941, c. 94, § 10, p. 398; C.S.Supp., 1941, § 48-712; R.S. 1943, § 48-621; Laws 1947, c. 175, § 6, p. 574; Laws 1949, c. 163, § 5, p. 421; Laws 1957, c. 208, § 3, p. 729; Laws 1969, c. 584, § 50, p. 2375; Laws 1985, LB 339, § 17; Laws 1989, LB 305, § 4; Laws 1994, LB 1066, § 38; Laws 1995, LB 1, § 5; Laws 1996, LB 1072, § 3; Laws 1999, LB 608, § 2; Laws 2000, LB 953, § 6; Laws 2003, LB 197, § 1; Laws 2012, LB782, § 62; Laws 2012, LB946, § 9.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-622.01 State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.**

(1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for payment of unemployment insurance benefits. 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, except that interest earned on money in the fund shall be credited to the Nebraska Training



and Support Trust Fund through June 30, 2015, and thereafter to the Nebraska Training and Support Cash Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund through June 30, 2015, and thereafter to the Nebraska Training and Support Cash Fund.

(4) Upon certification from the commissioner that disallowed costs by the United States Department of Labor for FY2007-08, FY2008-09, and FY2009-10, or any one of them, have been reduced to an amount certain by way of settlement or final judgment, the State Treasurer shall transfer the amount of such settlement or final judgment from the State Unemployment Insurance Trust Fund to the Employment Security Special Contingent Fund. The total amount of such transfers shall not exceed \$2,816,345. The amount of the reappropriation of Federal Funds appropriated in FY2004-05 under section 903(d) of the federal Social Security Act shall be reduced by the amount transferred.

(5) Upon certification from the commissioner that the amount needed to settle pending class action litigation and terminate the contributory retirement system established pursuant to section 48-609 has been reduced to an amount certain, the State Treasurer shall transfer the amount certified by the commissioner as needed to effectuate the settlement from the State Unemployment Insurance Trust Fund to the Employment Security Special Contingent Fund. The amount transferred pursuant to this subsection shall not exceed two million seven hundred seventy-three thousand dollars.

**Source:** Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2; Laws 2011, LB378, § 23; Laws 2014, LB906, § 16; Laws 2014, LB997, § 1.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**48-622.02 Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use; Nebraska Training**

**and Support Cash Fund; created; use; investment; Administrative Costs Reserve Account; created; use.**

(1) Until July 1, 2015:

(a) There is in the state treasury a special fund to be known as the Nebraska Training and Support Trust 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. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund;

(b) Money in the Nebraska Training and Support Trust Fund shall be used for (i) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (ii) administrative costs of creating, operating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (iii) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers of for-profit and not-for-profit businesses, (iv) recruitment of workers to Nebraska, (v) training new employees of expanding Nebraska businesses, (vi) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and (vii) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require; and

(c) There is within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivision (1)(b) of this section.

(2) On and after July 1, 2015:

(a) The Nebraska Training and Support 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. On July 1, 2015, the State Treasurer shall transfer any money in the Nebraska Training and Support Trust Fund to the Nebraska Training and Support Cash Fund. No expenditures shall be made from the Nebraska Training and Support Cash Fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Cash Fund;

(b) Money in the Nebraska Training and Support Cash Fund shall be used for (i) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (ii) administrative costs of creating, operating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Cash Fund, (iii) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers of for-profit and not-for-profit businesses, (iv) recruitment of workers to Nebraska, (v) training new employees of expanding Nebraska businesses, (vi) the costs of

creating a common web portal for the attraction of businesses and workers to Nebraska, (vii) developing and conducting labor availability and skills gap studies pursuant to the Sector Partnership Program Act, for which money may be transferred to the Sector Partnership Program Fund as directed by the Legislature, and (viii) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require;

(c) The Administrative Costs Reserve Account is created within the Nebraska Training and Support Cash Fund. Money shall be allocated from the Nebraska Training and Support Cash Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivision (2)(b) of this section; and

(d) The State Treasurer shall transfer two hundred fifty thousand dollars from the Nebraska Training and Support Cash Fund to the Sector Partnership Program Fund no later than July 15, 2016.

**Source:** Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3; Laws 2012, LB911, § 1; Laws 2014, LB997, § 2; Laws 2016, LB1110, § 13.  
Effective date April 14, 2016.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Sector Partnership Program Act, see section 48-3401.

### **48-622.03 Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.**

(1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

- (a) A representative of employers in Nebraska;
- (b) A representative of employees in Nebraska;
- (c) A representative of the public;
- (d) The Commissioner of Labor or a designee;
- (e) The Director of Economic Development or a designee;
- (f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

(3) Beginning July 1, 1996, through June 30, 2015, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. Beginning July 1, 2015, and annually thereafter, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Cash Fund. The guidelines shall include, but not be limited to, guidelines for certifying training

providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) Beginning September 1, 1997, through June 30, 2015, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. Beginning July 1, 2015, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Cash Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

**Source:** Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4; Laws 2014, LB997, § 3.

**48-625 Benefits; weekly payment; how computed.**

(1) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of subdivision (5) of section 48-628, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans Readjustment Assistance Act of 1952.

The percentage of benefits and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

(2) Vacation leave pay including that received in a lump sum or upon separation from employment shall be prorated in an amount reasonably attributable to each week claimed and considered payable with respect to such week.

**Source:** Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801, § 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws 1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8; Laws 2015, LB271, § 5.

**48-630 Claims; determinations by deputy.**

A determination upon a claim filed pursuant to section 48-629 shall be made promptly by a representative designated by the commissioner, hereinafter referred to as a deputy, and shall include a statement as to whether and in what amount claimant is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under subdivision (5) of section 48-627, and, if so, the first day of the benefit year, his or her weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year. Any benefits to which a claimant has been found eligible shall not be withheld because of the filing of an appeal under section 48-634 and such benefits shall be paid until the appeal tribunal has rendered its decision modifying or reversing the determination allowing such benefits if the claimant is otherwise eligible. Any benefits received by any person to which, under a redetermination or decision pursuant to sections 48-630 to 48-640, he or she has been found not entitled shall be treated as erroneous payments in accordance with the provisions of section 48-665. Whenever any claim involves the application of the provisions of subdivision (4) of section 48-628, the deputy shall promptly transmit his or her full findings of fact, with respect to that subdivision, to the commissioner, who, on the basis of the evidence submitted and such additional evidence as he or she may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issue involved under the subdivision, which shall be deemed to be the decision of the deputy. All claims arising out of the same alleged labor dispute may be considered at the same time. The parties shall be promptly notified of the determination, together with the reasons therefor, and such determination shall be deemed to be the final decision on the claim, unless an appeal is filed with the appeal tribunal in the manner prescribed in section 48-634.

**Source:** Laws 1937, c. 108, § 6, p. 379; Laws 1941, c. 94, § 4, p. 384; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-630; Laws 1969, c. 403, § 1, p. 1399; Laws 1972, LB 1392, § 6; Laws 1985, LB 338, § 1; Laws 1995, LB 1, § 11; Laws 1995, LB 240, § 2; Laws 2012, LB1058, § 1.

**48-631 Claims; redetermination; time; notice; appeal.**

The deputy may reconsider a determination whenever he or she finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact, but no such redetermination shall be made after two years from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in section 48-630 with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 48-634. Subject to the same limitations and for the same reasons, the Commissioner of Labor may reconsider the determi-

nation, in any case in which the final decision has been rendered by an appeal tribunal or a court, and may apply to the tribunal or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

**Source:** Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-631; Laws 1961, c. 238, § 5, p. 711; Laws 2011, LB11, § 1.

**48-632 Claims; determination; notice; persons entitled; employer; rights; duties.**

(1) Notice of a determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to his or her last-known address. In addition, notice of any determination, together with the reasons therefor, shall be promptly given in the same manner to any employer from whom claimant received wages on or after the first day of the base period for his or her most recent claim, and who has indicated prior to the determination, in such manner as required by rule and regulation of the commissioner, that such individual may be ineligible or disqualified under any provision of the Employment Security Law. An employer shall provide information to the department in respect to the request for information within ten days after the mailing or electronic transmission of a request.

(2) If the employer provided information pursuant to subsection (7) of section 48-652 on the claim establishing the previous benefit year but did not receive a determination because of no involvement of base period wages and there are wages from that employer in the base period for the most recent claim, the employer shall be provided the opportunity to provide new information that such individual may be ineligible or disqualified under any provision of the Employment Security Law on the current claim. This subsection shall not apply to employers who did not receive a determination because the separation was determined to result from a lack of work.

(3) On or after October 1, 2012, if an employer fails to provide information to the department within the time period specified in subsection (1) of this section, the employer shall forfeit any appeal rights otherwise available pursuant to section 48-634.

**Source:** Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-632; Laws 1985, LB 339, § 25; Laws 2012, LB1058, § 2.

**48-633 Repealed. Laws 2012, LB 1058, § 17.**

**48-634 Administrative appeal; notice; time allowed; hearing; parties.**

(1) The claimant or any other party entitled to notice of a determination as provided in section 48-632, may file an appeal from such determination with the department. Notice of appeal must be in writing or in accordance with rules and regulations adopted and promulgated by the commissioner and must be delivered and received within twenty days after the date of mailing of the notice of determination to his or her last-known address or, if such notice is not mailed, after the date of delivery of such notice of determination, except that



for good cause shown an appeal filed outside the prescribed time period may be heard. In accordance with section 303 of the federal Social Security Act, 42 U.S.C. 503, the commissioner shall provide the opportunity for a fair hearing before an impartial appeal tribunal on each appeal.

(2) Unless the appeal is withdrawn, the appeal tribunal, after affording the parties reasonable opportunities for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination. If an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employer and to the commissioner, both of whom shall be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question. The parties shall be promptly notified of the tribunal's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

**Source:** Laws 1941, c. 94, § 4, p. 386; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-634; Laws 1979, LB 328, § 1; Laws 1995, LB 239, § 1; Laws 2001, LB 192, § 10; Laws 2012, LB1058, § 3.

#### **48-636 Administrative appeals; decisions; conclusiveness.**

Except insofar as reconsideration of any determination is had under sections 48-630 to 48-632, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal which has become final, shall be conclusive for all the purposes of the Employment Security Law as between the Commissioner of Labor, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in sections 48-634 to 48-644, any determination, redetermination, or decision as to rights to benefits shall be conclusive for all the purposes of such law and shall not be subject to collateral attack by any employer.

**Source:** Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-636; Laws 1953, c. 167, § 7, p. 533; Laws 1985, LB 339, § 27; Laws 2012, LB1058, § 4.

#### **48-637 Administrative appeals; decisions; effect in subsequent proceedings; certification of questions.**

The final decisions of an appeal tribunal, and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the tribunal or by a court of competent jurisdiction, shall be binding upon the commissioner and any deputy in subsequent proceedings which involve similar questions of law; except that if in connection with any subsequent proceeding the commissioner or a deputy has serious doubt as to the correctness of any principle so declared he or she may certify his or her findings of fact in such case, together with the question of law involved to the appeal tribunal, which, after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceedings, shall thereupon certify to the commissioner, such deputy and such parties its answer to the question submitted. If the question thus certified to the appeal tribunal arises in connection with a claim for benefits, the tribunal in its discretion may remove

to itself the entire proceedings on such claim, and, after proceeding in accordance with the requirements of sections 48-634 to 48-643 with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim.

**Source:** Laws 1941, c. 94, § 4, p. 387; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-637; Laws 2012, LB1058, § 5.

**48-644 Benefits; payment; appeal not a supersedeas; reversal; effect.**

Benefits shall be promptly paid in accordance with a determination or redetermination. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal. The commencement of a proceeding for judicial review pursuant to section 48-638 shall not operate as a supersedeas or stay. If an employer is otherwise entitled to noncharging of benefits pursuant to sections 48-630 and 48-652, and a decision allowing benefits is finally reversed, no employer's account shall be charged with benefits paid pursuant to the erroneous determination, and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

**Source:** Laws 1941, c. 94, § 4, p. 389; C.S.Supp.,1941, § 48-706; R.S. 1943, § 48-644; Laws 1972, LB 1392, § 7; Laws 2012, LB1058, § 6.

**48-648 Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.**

(1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. The commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as

remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(3) The professional employer organization shall report and pay combined tax, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998, LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7; Laws 2009, LB631, § 5; Laws 2015, LB271, § 6.

#### **48-648.01 Employer; submit quarterly wage reports.**

The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. The commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

**Source:** Laws 1985, LB 343, § 2; Laws 1986, LB 950, § 6; Laws 2005, LB 484, § 8; Laws 2009, LB631, § 6; Laws 2015, LB271, § 7.

#### **48-652 Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.**

(1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of

contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if (i) such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.01, (D) left work from which he or she was discharged for misconduct connected with his or her work, (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01, or (F) was involuntarily separated from employment and such benefits were paid pursuant to section 48-628.05, and (ii) the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5)(c)(iii) of section 48-627. No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual was participating in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (5) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to

employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

(8) If a contributory employer responds to the department's request for information within the time period set forth in subsection (1) of section 48-632 and provides accurate information as known to the employer at the time of the response, the employer's experience account shall not be charged if the individual's separation from employment is voluntary and without good cause as determined under subdivision (1) of section 48-628.

**Source:** Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8; Laws 2010, LB1020, § 6; Laws 2012, LB1058, § 7.

**48-654 Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.**

Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only where an employer has transferred at any time a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the following September 30, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account



were measured for four calendar quarters ending September 30 preceding the computation date.

**Source:** Laws 1937, c. 108, § 7, p. 385; Laws 1941, c. 94, § 5, p. 394; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-654; Laws 1945, c. 115, § 6, p. 386; Laws 1947, c. 175, § 13, p. 582; Laws 1953, c. 169, § 1, p. 543; Laws 1985, LB 336, § 1; Laws 1985, LB 339, § 38; Laws 2005, LB 484, § 10; Laws 2009, LB631, § 9; Laws 2015, LB271, § 8.

**48-655 Combined taxes; payments in lieu of contributions; collections; set-offs; interest; actions; setoff against federal income tax refund; procedure.**

(1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action, (b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209, or (c) as provided in subsection (2) of this section. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may recover a covered unemployment compensation debt, as defined in 26 U.S.C. 6402, by setoff against a person's federal income tax refund. Such setoff shall be made in accordance with such section and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through setoff against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or is not a covered unemployment compensation debt. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and is a covered unemployment compensation debt before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to setoff does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed setoff.

**Source:** Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137;

Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB631, § 10; Laws 2012, LB1058, § 8.

**48-660.01 Benefits; nonprofit organizations; combined tax; payments in lieu of contributions; election; notice; appeal; lien; liability.**

(1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in subdivision (9) of section 48-603.

(2)(a) Any nonprofit organization which is, or becomes, subject to the Employment Security Law shall pay combined tax under sections 48-648 to 48-661 unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment fund an amount, equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(b) Any nonprofit organization which is, or becomes, subject to the Employment Security Law may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with subdivision (b) of this subsection shall continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying combined tax under the Employment Security Law may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(f) The commissioner, in accordance with such rules and regulations as he or she may adopt and promulgate, shall notify each nonprofit organization of any determination which he or she may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to redetermination and appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) Payments in lieu of contributions shall be made in accordance with this subsection as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit

organization, or group of such organizations, which has elected to make payment in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization;

(b) Payment of any bill rendered under subdivision (a) of this subsection shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it unless there has been an application for review and redetermination in accordance with subdivision (d) of this subsection;

(c) Payments made by any nonprofit organization under this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization;

(d) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization appeals the redetermination, and the appeal shall be in accordance with the Administrative Procedure Act; and

(e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest that, pursuant to section 48-655, applies to past-due contributions, and the commissioner may file a lien against such nonprofit organization in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of payments in lieu of contributions and interest in default and shall be enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(5) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with section 48-652.

**Source:** Laws 1971, LB 651, § 11; Laws 1985, LB 339, § 42; Laws 1988, LB 352, § 89; Laws 1994, LB 1337, § 19; Laws 1999, LB 165, § 2; Laws 2015, LB271, § 9.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

**Uniform State Tax Lien Registration and Enforcement Act**, see section 77-3901.

**48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; penalty; levy authorized; procedure; failure or refusal to honor levy; liability.**

(1)(a) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications.

(b) In addition to any benefits which he or she may be required to repay pursuant to subdivision (1)(a) of this section, if an overpayment is established pursuant to this section on or after October 1, 2013, an individual shall be required to pay to the department a penalty equal to fifteen percent of the amount of benefits received as a result of such willful failure to disclose or falsification. All amounts collected pursuant to this subdivision shall be remitted for credit to the Unemployment Compensation Fund.

(c) An appeal may be taken from any determination made pursuant to subdivision (1)(a) of this section in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subdivision (1)(a) of this section and the penalty required under subdivision (1)(b) of this section fails or refuses to repay such overpayment and any penalty assessed within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) 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 person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

**Source:** Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11; Laws 2012, LB1058, § 9; Laws 2015, LB271, § 10.

**48-665 Benefits; erroneous payments; recovery; setoff against federal income tax refund; procedure.**

(1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (a) without interest by civil action in the name of the commissioner, (b) by offset against any future benefits payable to the claimant

with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209, or (d) as provided in subsection (2) of this section.

(2) The commissioner may recover a covered unemployment compensation debt, as defined in 26 U.S.C. 6402, by setoff against a person's federal income tax refund. Such setoff shall be made in accordance with such section and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through setoff against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or is not a covered unemployment compensation debt. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and is a covered unemployment compensation debt before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to setoff does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed setoff.

**Source:** Laws 1937, c. 108, § 16, p. 401; Laws 1941, c. 94, § 12, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-665; Laws 1953, c. 167, § 14(1), p. 539; Laws 1969, c. 403, § 2, p. 1400; Laws 1980, LB 798, § 1; Laws 1985, LB 339, § 46; Laws 1986, LB 950, § 8; Laws 1993, LB 46, § 15; Laws 2009, LB631, § 11; Laws 2012, LB1058, § 10.

**48-665.01 Benefits; unlawful payments from foreign state or government; recovery.**

Any person who has received any sum as benefits to which he or she was not entitled from any agency which administers an employment security law of another state or foreign government and who has been found liable to repay benefits received under such law may be required to repay to the commissioner for such state or foreign government the amount found due. Such amount, without interest, may be collected (1) by civil action in the name of the commissioner acting as agent for such agency, (2) by offset against any future benefits payable to the claimant under the Employment Security Law for any benefit year which may commence within three years after the claimant was notified such amount was due, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, (3) by setoff against any state income tax refund due the claimant

pursuant to sections 77-27,197 to 77-27,209, or (4) as provided in subsection (2) of section 48-665.

**Source:** Laws 1953, c. 167, § 14(2), p. 540; Laws 1986, LB 950, § 9; Laws 1993, LB 46, § 16; Laws 2012, LB1058, § 11.

#### **48-669 Change in benefit amounts; when applicable.**

Any change in the weekly benefit amounts prescribed in section 48-624 or any change in the maximum annual benefit amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

**Source:** Laws 1949, c. 163, § 18, p. 435; Laws 1951, c. 157, § 2, p. 631; Laws 1953, c. 168, § 2, p. 542; Laws 1955, c. 190, § 11, p. 551; Laws 1957, c. 209, § 3, p. 741; Laws 1959, c. 229, § 3, p. 803; Laws 1961, c. 235, § 4, p. 698; Laws 1963, c. 291, § 4, p. 874; Laws 1965, c. 286, § 2, p. 820; Laws 1967, c. 299, § 2, p. 815; Laws 1969, c. 401, § 2, p. 1394; Laws 1971, LB 651, § 14; Laws 1972, LB 1391, § 2; Laws 1973, LB 333, § 2; Laws 1974, LB 775, § 2; Laws 1975, LB 475, § 2; Laws 1977, LB 337, § 2; Laws 1979, LB 183, § 2; Laws 1983, LB 524, § 2; Laws 1985, LB 216, § 2; Laws 1987, LB 446, § 3; Laws 1994, LB 286, § 4; Laws 1998, LB 225, § 4; Laws 2005, LB 739, § 13; Laws 2015, LB271, § 11.

#### **48-672 Short-time compensation program created.**

Sections 48-672 to 48-683 create the short-time compensation program.

**Source:** Laws 2014, LB961, § 13.

#### **48-673 Short-time compensation program; terms, defined.**

For purposes of sections 48-672 to 48-683:

(1) Affected unit means a specified plant, department, shift, or other definable unit which includes three or more employees to which an approved short-time compensation plan applies;

(2) Commissioner means the Commissioner of Labor or any delegate or subordinate responsible for approving applications for participation in a short-time compensation plan;

(3) Health and retirement benefits means employer-provided health benefits and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code, or contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code, which are incidents of employment in addition to the cash remuneration earned;

(4) Short-time compensation means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the Employment Security Law;

(5) Short-time compensation plan means a plan submitted by an employer, for written approval by the commissioner, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs;



(6) Unemployment compensation means the unemployment benefits payable under the Employment Security Law other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment; and

(7) Usual weekly hours of work means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

**Source:** Laws 2014, LB961, § 14.

**48-674 Short-time compensation program; participation; application; form; contents.**

An employer wishing to participate in the short-time compensation program shall submit a signed written short-time compensation plan to the commissioner for approval. The commissioner shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

(1) The affected unit or units covered by the plan, including the number of full-time or part-time employees in such unit, the percentage of employees in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number, and any other information required by the commissioner to identify plan participants;

(2) A description of how employees in the affected unit will be notified of the employer's participation in the short-time compensation plan if such application is approved, including how the employer will notify those employees in a collective-bargaining unit as well as any employees in the affected unit who are not in a collective-bargaining unit. If the employer will not provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice;

(3) A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation plan application may be approved which shall be not less than ten percent and not more than sixty percent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application;

(4)(a) Certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program.

(b) For defined benefit retirement plans, the hours that are reduced under the short-time compensation plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had

not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

(c) Notwithstanding subdivisions (4)(a) and (b) of this section, an application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating;

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, temporary or permanent layoffs, or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the short-time compensation plan;

(6) Certification by the employer that the short-time compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment;

(7) Agreement by the employer to: Furnish reports to the commissioner relating to the proper conduct of the plan; allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, to monitor and evaluate the plan; and follow any other directives the commissioner deems necessary for the agency to implement the plan and which are consistent with the requirements for short-time compensation plan applications;

(8) Certification by the employer that participation in the short-time compensation plan and its implementation is consistent with the employer's obligations under applicable federal and state laws;

(9) The effective date and duration of the plan that shall expire not later than the end of the twelfth full calendar month after the effective date;

(10) Certification by the employer that it has obtained the written approval of any applicable collective-bargaining unit representative and has notified all affected employees who are not in a collective-bargaining unit of the proposed short-time compensation plan;

(11) Certification by the employer that it will not hire additional part-time or full-time employees for the affected unit while the short-time compensation plan is in effect; and

(12) Any other provision added to the application by the commissioner that the United States Secretary of Labor determines to be appropriate for purposes of a short-time compensation program.

**Source:** Laws 2014, LB961, § 15.

**48-675 Short-time compensation program; commissioner; decision; eligibility.**

(1) The commissioner shall approve or disapprove a short-time compensation plan in writing within thirty days after its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another short-time compensation plan for approval not earlier than forty-five days after the date of the disapproval.

(2)(a) A short-time compensation plan will only be approved for a contributory employer that (a) is eligible for experience rating under subdivision (4)(a) of section 48-649, (b) has a positive balance in the employer's experience account, (c) has filed all quarterly reports and other reports required under the Employment Security Law, and (d) has paid all obligation assessments, contributions, interest, and penalties due through the date of the employer's application.

(b) A short-time compensation plan will only be approved for an employer liable for making payments in lieu of contributions that has filed all quarterly reports and other reports required under the Employment Security Law and has paid all obligation assessments, payments in lieu of contributions, interest, and penalties due through the date of the employer's application.

**Source:** Laws 2014, LB961, § 16.

**48-676 Short-time compensation program; plan; effective date; notice of approval; expiration; revocation; termination.**

(1) A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner.

(2) If a short-time compensation plan is revoked by the commissioner under section 48-677, the plan shall terminate on the date specified in the commissioner's written order of revocation.

(3) An employer may terminate a short-time compensation plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date.

(4) An employer may submit a new application to participate in another short-time compensation plan at any time after the expiration or termination date.

**Source:** Laws 2014, LB961, § 17.

**48-677 Short-time compensation program; plan; revocation; procedure; grounds; order.**

(1) The commissioner may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

(2) The commissioner may periodically review the operation of each employer's short-time compensation plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short-time compensation plan, and violation of any criteria on which approval of the plan was based.

**Source:** Laws 2014, LB961, § 18.

**48-678 Short-time compensation program; plan; modification; request; decision; employer; report.**

(1) An employer may request a modification of an approved plan by filing a written request with the commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the short-time compensation plan. The commissioner shall approve or disapprove the proposed modification in writing within thirty days after receipt and promptly communicate the decision to the employer.

(2) The commissioner may approve a request for modification of the plan based on conditions that have changed since the plan was approved if the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the commissioner shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

(3) An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer must report every change to the plan to the commissioner promptly and in writing. The commissioner may terminate an employer's plan if the employer fails to meet this reporting requirement. If the commissioner determines that the reported change is substantial, the commissioner shall require the employer to request a modification to the plan.

**Source:** Laws 2014, LB961, § 19.

**48-679 Short-time compensation program; individual; eligibility.**

An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

(1) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed;

(2) Notwithstanding any other provisions of the Employment Security Law relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the commissioner such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.; and

(3) Notwithstanding any other provision of law, an individual covered by a short-time compensation plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

**Source:** Laws 2014, LB961, § 20.

**48-680 Short-time compensation program; weekly benefit amount; provisions applicable to individuals.**

(1) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(2) An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid short-time compensation benefits for more than fifty-two weeks under a short-time compensation plan.

(3) The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of unemployment compensation established for that individual's benefit year.

(4) Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with short-time compensation provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

(5) The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan:

(a) If combined hours of work in a week for both employers does not result in a reduction of at least ten percent, or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation, of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to short-time compensation;

(b) If the combined hours of work for both employers results in a reduction equal to or greater than ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, of the usual weekly hours of work for the short-time compensation employer, the short-time compensation payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, or more of the individual's usual weekly hours of work. A week for which benefits are paid under this subdivision shall be reported as a week of short-time compensation; and

(c) If an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his or her usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection (1) of this section.

(6) An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of unemployment compensation to which he or she would otherwise be eligible.

(7) An individual who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

**Source:** Laws 2014, LB961, § 21.

**48-681 Short-time compensation; charged to employer’s experience account.**

Short-time compensation shall be charged to the employer’s experience account in the same manner as unemployment compensation is charged. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

**Source:** Laws 2014, LB961, § 22.

**48-682 Short-time compensation; when considered exhaustee.**

An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits under section 48-628.02 and, if otherwise eligible under such section, shall be eligible to receive extended benefits.

**Source:** Laws 2014, LB961, § 23.

**48-683 Short-time compensation program; department; funding; report.**

(1) The department shall not use General Funds to implement the short-time compensation program. The department shall use any and all available federal funds to implement the short-time compensation program, including, but not limited to, federal funds distributed to the state under sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended.

(2) The department shall submit an annual report to the Governor and electronically to the Legislature on the short-time compensation program trends, including the number of employers filing short-time compensation program plans, the number of layoffs averted through the use of the short-time compensation program, the amount of short-time compensation program benefits paid, and other information pertinent to the short-time compensation program.

**Source:** Laws 2014, LB961, § 24.

**ARTICLE 8**

**COMMISSION OF INDUSTRIAL RELATIONS**

Section

- 48-801. Terms, defined.
- 48-801.01. Act, how cited.
- 48-802. Public policy.
- 48-804. Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.
- 48-809. Commission; powers.
- 48-811. Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.



Section

- 48-811.02. Repealed. Laws 2011, LB 397, § 35.
- 48-813. Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.
- 48-816. Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.
- 48-817. Commission; findings; decisions; orders.
- 48-818. Commission; findings; order; powers; duties; orders authorized; modification.
- 48-818.01. School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.
- 48-818.02. School district, educational service unit, or community college; total compensation; considerations.
- 48-818.03. School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.
- 48-824. Labor negotiations; prohibited practices.
- 48-838. Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.
- 48-839. Changes made by Laws 2011, LB397; applicability.

**48-801 Terms, defined.**

As used in the Industrial Relations Act, unless the context otherwise requires:

- (1) Certificated employee has the same meaning as in section 79-824;
- (2) Commission means the Commission of Industrial Relations;
- (3) Commissioner means a member of the commission;
- (4) Governmental service means all services performed under employment by the State of Nebraska or any political or governmental subdivision thereof, including public corporations, municipalities, and public utilities;
- (5) Industrial dispute includes any controversy between public employers and public employees concerning terms, tenure, or conditions of employment; the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment; or refusal to discuss terms or conditions of employment;
- (6) Instructional employee means an employee of a community college who provides direct instruction to students;
- (7) Labor organization means any organization of any kind or any agency or employee representation committee or plan, in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;
- (8) Metropolitan statistical area means a metropolitan statistical area as defined by the United States Office of Management and Budget;
- (9) Municipality means any city or village in Nebraska;
- (10) Noncertificated and noninstructional school employee means a school district, educational service unit, or community college employee who is not a certificated or instructional employee;
- (11) Public employee includes any person employed by a public employer;

(12) Public employer means the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia;

(13) Public utility includes any person or governmental entity, including any public corporation, public power district, or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof; and

(14) Supervisor means any public employee having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees, or responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with such action the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

**Source:** Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1; Laws 2011, LB397, § 1.

#### **48-801.01 Act, how cited.**

Sections 48-801 to 48-839 shall be known and may be cited as the Industrial Relations Act.

**Source:** Laws 1986, LB 809, § 1; Laws 1995, LB 365, § 1; Laws 1995, LB 382, § 3; Laws 2011, LB397, § 2.

#### **48-802 Public policy.**

To make operative the provisions of section 9, Article XV, of the Constitution of Nebraska, the public policy of the State of Nebraska is hereby declared to be as follows:

(1) The continuous, uninterrupted and proper functioning and operation of the governmental service including governmental service in a proprietary capacity and of public utilities engaged in the business of furnishing transportation for hire, telephone service, telegraph service, electric light, heat, or power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more of them, to the people of Nebraska are hereby declared to be essential to their welfare, health, and safety. It is contrary to the public policy of the state to permit any substantial impairment or suspension of the operation of governmental service, including governmental service in a proprietary capacity or any such utility by reason of industrial disputes therein. It is the duty of the State of Nebraska to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities, or catastrophes which would result therefrom. It is therefor further declared that governmental service, including governmental service in a proprietary capacity, and the service of such public utilities are clothed with a vital public interest and to protect the same it is necessary that the relations between the public employers and public employees in such

industries be regulated by the State of Nebraska to the extent and in the manner provided in the Industrial Relations Act;

(2) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any governmental service or governmental service in a proprietary capacity of this state, either by strike, lockout, or other means; and

(3) No right shall exist in any natural or corporate person or group of persons to hinder, delay, limit, or suspend the continuity or efficiency of any public utility service, either by strike, lockout, or other means.

**Source:** Laws 1947, c. 178, § 2, p. 587; Laws 2011, LB397, § 3.

**48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.**

(1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each commissioner shall be appointed and hold office for a term of six years and until a successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be deemed the act or decision of the commission. Three commissioners shall preside over and decide all industrial disputes where the matter at issue is the comparability of wages, benefits, and terms and conditions of employment.

(4) The commission shall not be subject to the Administrative Procedure Act.

**Source:** Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2; Laws 2011, LB397, § 4.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**48-809 Commission; powers.**

The commission may adopt all reasonable and proper regulations to govern its proceedings, the filing of pleadings, the issuance and service of process, and the issuance of subpoenas for attendance of witnesses, may administer oaths, and may regulate the mode and manner of all its investigations, inspections, hearings, and trials. Except as otherwise provided in the Industrial Relations Act or the State Employees Collective Bargaining Act, in the taking of evidence, the rules of evidence, prevailing in the trial of civil cases in Nebraska, shall be observed by the commission.

**Source:** Laws 1947, c. 178, § 9, p. 590; Laws 2011, LB397, § 5.

## Cross References

State Employees Collective Bargaining Act, see section 81-1369.

**48-811 Commission; filing of petition; effect; change in employment status, wages, or terms and conditions of employment; motion; hearing; order authorized; exception.**

(1) Except as provided in the State Employees Collective Bargaining Act, any public employer, public employee, or labor organization, or the Attorney General of Nebraska on his or her own initiative or by order of the Governor, when any industrial dispute exists between parties as set forth in section 48-810, may file a petition with the commission invoking its jurisdiction. No adverse action by threat or harassment shall be taken against any public employee because of any petition filing by such employee, and the employment status of such employee shall not be altered in any way pending disposition of the petition by the commission except as provided in subsection (2) of this section.

(2) If a change in the employment status or in wages or terms and conditions of employment is necessary, a motion by either party or by the parties jointly may be presented to the commission at that time and if the commission finds, based on a showing of evidence at a hearing thereon, that the requested change is both reasonable and necessary to serve an important public interest and that the employer has not considered a change in the employment status, wages, or terms and conditions of employment as a policy alternative on an equal basis with other policy alternatives to achieve budgetary savings, the commission may order that the requested change be allowed pending final resolution of the pending industrial dispute.

(3) Subsection (2) of this section does not apply to public employers subject to the State Employees Collective Bargaining Act.

**Source:** Laws 1947, c. 178, § 11, p. 590; Laws 1969, c. 407, § 4, p. 1408; Laws 1987, LB 661, § 24; Laws 2011, LB397, § 6.

## Cross References

State Employees Collective Bargaining Act, see section 81-1369.

**48-811.02 Repealed. Laws 2011, LB 397, § 35.**

**48-813 Commission; notice of pendency of proceedings; service; response; filing; final offer; included with petition; included with answers; procedure; exception; hearing; waiver of notice.**

(1) Whenever the jurisdiction of the commission is invoked, notice of the pendency of the proceedings shall be given in such manner as the commission shall provide for serving a copy of the petition and notice of filing upon the adverse party. A public employer or labor organization may be served by sending a copy of the petition filed to institute the proceedings and a notice of filing, which shall show the filing date, in the manner provided for service of a summons in a civil action. Such employer or labor organization shall have twenty days after receipt of the petition and notice of filing in which to serve and file its response.

(2) The petitioner shall include its final offer, as voted by the petitioner, the governing body, or the bargaining unit or as considered pursuant to a ratification process, with its petition. The respondent shall include its final offer, as voted by the respondent, the governing body, or the bargaining unit or as

considered pursuant to a ratification process, with its answer. Within fourteen days after filing of the answer, the parties shall vote to accept or reject or consider pursuant to a ratification process the other's final offer and file a subsequent pleading indicating the result. The vote concerning the governing body's final offer shall be published on its agenda and held where the public may attend. The commission shall not enter a final order on wages or conditions of employment unless both parties have rejected the others' final offer. This subsection does not apply to public employers subject to the State Employees Collective Bargaining Act.

(3) When a petition is filed to resolve an industrial dispute, a hearing shall mandatorily be held within sixty days from the date of filing thereof. A recommended decision and order in cases arising under section 48-818, an order in cases not arising under section 48-818, and findings if required, shall mandatorily be made and entered thereon within thirty days after such hearing. The time requirements specified in this section may be extended for good cause shown on the record or by agreement of the parties. Failure to meet such mandatory time requirements shall not deprive the commission of jurisdiction. However, if the commission fails to hold a hearing on the industrial dispute within sixty days of filing or has failed to make a recommended decision and order, and findings of fact if required, in cases arising under section 48-818, or an order, and findings of fact if required, in cases not arising under section 48-818, and findings, within thirty days after the hearing and good cause is not shown on the record or the parties to the dispute have not jointly stipulated to the enlargement of the time limit, then either party may file an action for mandamus in the district court for Lancaster County to require the commission to hold the hearing or to render its order and findings if required. For purposes of this section, the hearing on an industrial dispute shall not be deemed completed until the record is prepared and counsel briefs have been submitted, if such are required by the commission.

(4) Any party, including the State of Nebraska or any of its employer-representatives as defined in section 81-1371 or any political subdivision of the State of Nebraska, may waive such notice and may enter a voluntary appearance in any matter in the commission. The giving of such notice in such manner shall subject the public employers, the labor organizations, and the persons therein to the jurisdiction of the commission.

**Source:** Laws 1947, c. 178, § 13, p. 590; Laws 1972, LB 1228, § 2; Laws 1974, LB 819, § 7; Laws 1983, LB 447, § 72; Laws 1984, LB 832, § 1; Laws 1987, LB 661, § 25; Laws 2011, LB397, § 7.

**Cross References**

State Employees Collective Bargaining Act, see section 81-1369.

**48-816 Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.**

(1)(a) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission which shall promptly take such preliminary proceedings as may be necessary to ensure prompt hearing and speedy adjudication of the industrial dispute. The commission may, upon its own initiative or upon request of a party to the dispute, make such temporary findings and orders as necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues. In the

event of an industrial dispute between a public employer and a public employee or a labor organization when such public employer and public employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume, as the case may be, and may make any such order or orders as appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any public employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Before July 1, 2012, upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. On and after July 1, 2012, upon the request of either party, a resolution officer may be appointed if the parties are within the provisions of section 48-818.01. The commission shall appoint mediators, factfinders, or before July 1, 2012, special masters and on and after such date resolution officers for such purpose. Such orders for bargaining, mediation, factfinding, or before July 1, 2012, a special master proceeding and on and after such date a resolution officer proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith means the performance of the mutual obligation of the public employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) In negotiations between a municipality, municipally owned utility, or county and a labor organization, staffing related to issues of safety shall be mandatory subjects of bargaining and staffing relating to scheduling work, such as daily staffing, staffing by rank, and overall staffing requirements, shall be permissive subjects of bargaining.

(2) Except as provided in the State Employees Collective Bargaining Act, public employers may recognize employee organizations for the purpose of negotiating collectively in the determination of and administration of grievances arising under the terms and conditions of employment of their public employees as provided in the Industrial Relations Act and may negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

(3)(a) Except as provided in subdivisions (b) and (c) of this subsection, a supervisor shall not be included in a single bargaining unit with any other public employee who is not a supervisor.

(b) All firefighters and police officers employed in the fire department or police department of any municipality in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single bargaining unit represented by a public employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize a public employees bargaining unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding



authority subordinate only to the chief when such bargaining unit is designated or elected by public employees in the unit.

(c) All administrators employed by a Class V school district shall be presumed to have a community of interest and may join a single bargaining unit composed otherwise of teachers and other certificated employees for purposes of the Industrial Relations Act, except that the following administrators shall be exempt: The superintendent, associate superintendent, assistant superintendent, secretary and assistant secretary of the board of education, executive director, administrators in charge of the offices of state and federal relations and research, chief negotiator, and administrators in the immediate office of the superintendent. A Class V school district shall recognize a public employees bargaining unit composed of teachers and other certificated employees and administrators, except the exempt administrators, when such bargaining unit is formed by the public employees as provided in section 48-838 and may recognize such a bargaining unit as provided in subsection (2) of this section. In addition, all administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.

(4) When a public employee organization has been certified as an exclusive collective-bargaining agent or recognized pursuant to any other provisions of the Industrial Relations Act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such public employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in such act and to negotiate and enter into written agreements with such public employee organizations in determining such terms and conditions of employment, including wages and hours.

(5) Upon receipt by a public employer of a request from a labor organization to bargain on behalf of public employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the public employer as the exclusive bargaining representative for the public employees in that bargaining unit.

(6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission may (a) make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state, (b) request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers, (c) conduct studies of problems involved in representation and negotiation, including, but not

limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies, (d) make available to public employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and public employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and (e) establish, after consulting representatives of public employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, before July 1, 2012, special masters and on and after such date resolution officers, or members of factfinding boards.

(7)(a) Except for those cases arising under section 48-818, the commission shall make findings of facts in all cases in which one of the parties to the dispute requests findings. Such request shall be specific as to the issues on which the party wishes the commission to make findings of fact.

(b) In cases arising under section 48-818, findings of fact shall not be required of the commission unless both parties to the dispute stipulate to the request and to the specific issues on which findings of fact are to be made.

(c) If findings of fact are requested under subdivision (a) or (b) of this subsection, the commission may require the parties making the request to submit proposed findings of fact to the commission on the issues on which findings of facts are requested.

(d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within twenty-five days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of receipt of such request and shall issue an order within ten days after holding such posttrial conference, which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

**Source:** Laws 1947, c. 178, § 16, p. 591; Laws 1967, c. 303, § 2, p. 825; Laws 1969, c. 407, § 5, p. 1408; Laws 1972, LB 1402, § 1; Laws 1972, LB 1228, § 3; Laws 1979, LB 444, § 5; Laws 1984, LB 832, § 2; Laws 1985, LB 213, § 2; Laws 1986, LB 809, § 5; Laws 1987, LB 524, § 2; Laws 1987, LB 661, § 26; Laws 1988, LB 519, § 1; Laws 1988, LB 684, § 1; Laws 1988, LB 942, § 1; Laws 1995, LB 365, § 2; Laws 2011, LB397, § 8.

#### Cross References

State Employees Collective Bargaining Act, see section 81-1369.

#### **48-817 Commission; findings; decisions; orders.**

After the hearing and any investigation, the commission shall make all findings, findings of fact, recommended decisions and orders, and decisions and orders in writing, which findings, findings of fact, recommended decisions and orders, and decisions and orders shall be entered of record. Except as

provided in the State Employees Collective Bargaining Act, the final decision and order or orders shall be in effect from and after the date therein fixed by the commission, but no such order or orders shall be retroactive except as provided otherwise in the Industrial Relations Act. Except as provided otherwise in the Industrial Relations Act, in the making of any findings or orders in connection with any such industrial dispute, the commission shall give no consideration to any evidence or information which it may obtain through an investigation or otherwise receive, except matters of which the district court might take judicial notice, unless such evidence or information is presented and made a part of the record in a hearing and opportunity is given, after reasonable notice to all parties to the controversy of the initiation of any investigation and the specific contents of the evidence or information obtained or received, to rebut such evidence or information either by cross-examination or testimony.

**Source:** Laws 1947, c. 178, § 17, p. 592; Laws 1979, LB 444, § 7; Laws 1984, LB 832, § 3; Laws 1987, LB 661, § 27; Laws 2011, LB397, § 9.

#### Cross References

State Employees Collective Bargaining Act, see section 81-1369.

### **48-818 Commission; findings; order; powers; duties; orders authorized; modification.**

(1) Except as provided in the State Employees Collective Bargaining Act, the findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the commission shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In establishing wage rates the commission shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees. Any order or orders entered may be modified on the commission's own motion or on application by any of the parties affected, but only upon a showing of a change in the conditions from those prevailing at the time the original order was entered.

(2) For purposes of industrial disputes involving public employers other than school districts, educational service units, and community colleges with their certificated and instructional employees and public employers subject to the State Employees Collective Bargaining Act:

(a) Job matches shall be sufficient for comparison if (i) evidence supports at least a seventy percent match based on a composite of the duties and time spent performing those duties and (ii) at least three job matches per classification are available for comparison. If three job matches are not available, the commission shall base its order on the historic relationship of wages paid to such position over the last three fiscal years, for which data is available, as compared to wages paid to a position for which a minimum of three job matches are available;

(b) The commission shall adhere to the following criteria when establishing an array:

(i) Geographically proximate public employers and Nebraska public employers are preferable for comparison;

(ii) The preferred size of an array is seven to nine members. As few as five members may be chosen if all array members are Nebraska employers. The commission shall include members mutually agreed to by the parties in the array;

(iii) If more than nine employers with job matches are available, the commission shall limit the array to nine members, based upon selecting array members with the highest number of job matches at the highest job match percentage;

(iv) Nothing in this subdivision (2)(b) of this section shall prevent parties from stipulating to an array member that does not otherwise meet the criteria in such subdivision, and nothing in such subdivision shall prevent parties from stipulating to less than seven or more than nine array members;

(v) The commission shall not require a balanced number of larger or smaller employers or a balanced number of Nebraska or out-of-state employers;

(vi) If the array includes a public employer in a metropolitan statistical area other than the metropolitan statistical area in which the employer before the commission is located, only one public employer from such metropolitan statistical area may be included in the array;

(vii) Arrays for public utilities with annual revenue of five hundred million dollars or more shall include both comparable public and privately owned utilities. Arrays for public utilities with annual revenue of less than five hundred million dollars may include both comparable public and privately owned utilities. Public utilities that produce radioactive material and energy pursuant to section 70-627.02 shall have at least four members in its array that produce radioactive material and energy when employees directly involved in this production are included in the bargaining unit. For public utilities that generate, transmit, and distribute power, the array shall include members that also perform these functions. For a public utility serving a city of the primary class, the array shall only include public power districts in Nebraska that generate, transmit, and distribute power and any out-of-state utilities whose number of meters served is not more than double or less than one-half of the number of meters served by the public utility serving a city of the primary class unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(viii) In constructing an array for a public utility, the commission shall use fifty-mile concentric circles until it reaches the optimum array pursuant to subdivision (2)(b)(ii) of this section; and

(ix) For a statewide public utility that provides service to a majority of the counties in Nebraska, any Nebraska public or private job match may be used without regard to the population or full-time equivalent employment requirements of this section, and any out-of-state job match may be used if the full-time equivalent employment of the out-of-state employer is no more than double and no less than one-half of the full-time equivalent employment of the bargaining unit of the statewide public utility in question;

(c) In determining same or similar working conditions, the commission shall adhere to the following:

(i) Public employers in Nebraska shall be presumed to provide same or similar working conditions unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(ii) Public employers shall be presumed to provide the same or similar working conditions if (A) for public employers that are counties or municipalities, the population of such public employer is not more than double or less than one-half of the population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, (B) for public employers that are public utilities, the number of such public employer's employees is not more than double or less than one-half of the number of employees of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar, or (C) for public employers that are school districts, educational service units, or community colleges with noncertificated and noninstructional school employees, the student enrollment of such public employer is not more than double or less than one-half of the student enrollment of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar;

(iii)(A) Public employers located within a metropolitan statistical area who meet the population requirements of subdivision (2)(c)(ii)(A) of this section, if the public employer is a county or municipality, or the student enrollment requirements of subdivision (2)(c)(ii)(C) of this section, if the public employer is a school district or an educational service unit, shall be presumed to provide the same or similar working conditions if the metropolitan statistical area population in which they are located is not more than double or less than one-half the metropolitan statistical area population of the public employer before the commission, unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar.

(B) The presumption created by subdivision (2)(c)(iii)(A) of this section may be overcome in situations where evidence establishes that there are substantial similarities which cause the work or conditions of employment to be similar, allowing the commission to consider public employers located within a metropolitan statistical area even if the metropolitan statistical area population in which that employer or employers are located is more than double or less than one-half the metropolitan statistical area population of the public employer before the commission. The burden of establishing sufficient similarity is on the party seeking to include a public employer pursuant to this subdivision (2)(c)(iii)(B) of this section; and

(iv) Public employers other than public utilities which are not located within a metropolitan statistical area shall not be compared to public employers located in a metropolitan statistical area. For purposes of this subdivision, metropolitan statistical area includes municipalities with populations of fifty thousand inhabitants or more;

(d) Prevalent shall be determined as follows: (i) For numeric values, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median. For fringe benefits, prevalent shall be the midpoint between the arithmetic mean and the arithmetic median as long as a majority of the array members

provide the benefit; and (ii) for nonnumeric comparisons, prevalent shall be the mode that the majority of the array members provide if the compared-to benefit is similar in nature. If there is no clear mode, the benefit or working condition shall remain unaltered by the commission;

(e) For any out-of-state employer, the parties may present economic variable evidence and the commission shall determine what, if any, adjustment is to be made if such evidence is presented. The commission shall not require that any such economic variable evidence be shown to directly impact the wages or benefits paid to employees by such out-of-state employer;

(f) In determining total or overall compensation, the commission shall value every economic item even if the year in question has expired. The commission shall require that all wage and benefit levels be leveled over the twelve-month period in dispute to account for increases or decreases which occur in the wage or benefit levels provided by any array member during such twelve-month period;

(g) In cases filed pursuant to this subsection (2) of this section, the commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than those adopted by rule pursuant to section 48-809. The commission shall receive evidence relating to array selection, job match, and wages and benefits which have been assembled by telephone, electronic transmission, or mail delivery, and any such evidence shall be accompanied by an affidavit from the employer or any other person with personal knowledge which affidavit shall demonstrate the affiant's personal knowledge and competency to testify on the matters thereon. The commission, with the consent of the parties to the dispute, and in the presence of the parties to the dispute, may contact an individual employed by an employer under consideration as an array member by telephone to inquire as to the nature or value of a working condition, wage, or benefit provided by that particular employer as long as the individual in question has personal knowledge about the information being sought. The commission may rely upon information gained in such inquiry for its decision. Opinion testimony shall be received by the commission based upon evidence provided in accordance with this subdivision. Testimony concerning job match shall be received if job match inquiries were conducted by telephone, electronic transmission, or mail delivery if the witness providing such testimony verifies the method of such job match inquiry and analysis;

(h) In determining the value of defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall use an hourly rate value calculation as follows:

(i) Once the array has been chosen, each array member and the public employer of the subject bargaining unit shall provide a copy of its most recent defined benefit pension actuarial valuation report. Each array member and the public employer of the subject bargaining unit shall provide the most recent copy of its health insurance plans or health benefit plans, covering the preceding twelve-month period, with associated employer and employee costs, to the parties and the commission. Each array member shall also provide information concerning premium equivalent payments and contributions for health savings accounts. Each array member and the public employer of the subject bargaining unit shall indicate which plans are most used. The plans that are most used shall be used for comparison;



(ii) Once the actuarial valuation reports are received, the parties shall have thirty calendar days to determine whether to have the pensions actuarially valued at an hourly rate value other than equal. The hourly rate value for defined benefit plans shall be presumed to be equal to that of the array selected unless one or both of the parties presents evidence establishing that the actuarially derived annual normal cost of the pension benefit for each job classification in the subject bargaining unit is above or below the midpoint of the average normal cost. Consistent methods and assumptions are to be applied to determine the annual normal cost of any defined benefit pension plan of the subject bargaining unit and each array member. For this purpose, the entry age normal actuarial cost method is recommended. The actuarial assumptions that are selected for this purpose should reflect expectations for a defined benefit pension plan maintained for the employees of the subject bargaining unit and acknowledge the eligibility and benefit provisions for each respective defined benefit pension plan. In this regard, different eligibility and benefit provisions may suggest different retirement or termination of employment assumptions. The methods and assumptions shall be attested to by an actuary holding a current membership with the American Academy of Actuaries. Any party who requests or presents evidence regarding actuarial valuation of a defined benefit plan shall be responsible for costs associated with such valuation and testimony. The actuarial valuation is presumed valid, unless a party presents competent actuarial evidence that the valuation is invalid;

(iii) The hourly rate value for defined contribution plans shall be established upon comparison of employer contributions;

(iv) The hourly rate value for health insurance plans or health benefit plans shall be established based upon the public employer's premium payments, premium equivalent payments, and public employer and public employee contributions to health savings accounts;

(v) The commission shall not compare defined benefit plans to defined contribution plans or defined contribution plans to defined benefit plans; and

(vi) The commission shall order increases or decreases in wage rates by job classification based upon the hourly rate value for health-related benefits, benefits provided for retirement plans, and wages;

(i) For benefits other than defined benefit and defined contribution retirement plans and health insurance plans or health benefit plans, the commission shall issue an order based upon a determination of prevalency as determined under subdivision (2)(d) of this section; and

(j) The commission shall issue an order regarding increases or decreases in base wage rates or benefits as follows:

(i) The order shall be retroactive with respect to increases and decreases to the beginning of the bargaining year in dispute;

(ii) The commission shall determine whether the hourly rate value of the bargaining unit's members or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the hourly rate value falls within the ninety-eight percent to one hundred two percent range, the commission shall order no change in wage rates. If the hourly rate value is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the hourly rate value is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two

percent of the midpoint. If the hourly rate value is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the hourly rate value is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this subdivision (2)(j) of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis;

(iii) The parties shall have twenty-five calendar days to negotiate modifications to wages and benefits. If no agreement is reached, the commission's order shall be followed as issued; and

(iv) The commission shall provide an offset to the public employer when a lump-sum payment is due because benefits were paid in excess of the prevalent as determined under subdivision (2)(d) of this section or when benefits were paid below the prevalent as so determined but wages were above prevalent.

**Source:** Laws 1947, c. 178, § 18, p. 592; Laws 1969, c. 407, § 6, p. 1410; Laws 1987, LB 661, § 28; Laws 2011, LB397, § 10.

#### Cross References

State Employees Collective Bargaining Act, see section 81-1369.

**48-818.01 School districts, educational service units, and community colleges; collective bargaining; timelines; procedure; resolution officer; powers; duties; action filed with commission; when; collective-bargaining agreement; contents.**

(1) The Legislature finds that it is in the public's interest that collective bargaining involving school districts, educational service units, and community colleges and their certificated and instructional employees commence and conclude in a timely fashion consistent with school district budgeting and financing requirements. To that end, the timelines in this section shall apply when the public employer is a school district, educational service unit, or community college.

(2) On or before September 1 of the year preceding the contract year in question, the certificated and instructional employees' collective-bargaining agent shall request recognition as bargaining agent. The governing board shall respond to such request not later than the following October 1. A request for recognition need not be filed if the certificated and instructional employees' bargaining agent has been certified by the commission as the exclusive collective-bargaining agent. On or before November 1 of the year preceding the contract year in question, negotiations shall begin. There shall be no fewer than four negotiations meetings between the certificated and instructional employees' collective-bargaining agent and the governing board's bargaining agent. Either party may seek a bargaining order pursuant to subsection (1) of section 48-816 at any stage in the negotiations. If an agreement is not reached on or

before the following February 8, the parties shall submit to mandatory mediation or factfinding as ordered by the commission pursuant to sections 48-811 and 48-816 unless the parties mutually agree in writing to forgo mandatory mediation or factfinding.

(3)(a) The mediator or factfinder as ordered by the commission under subsection (2) of this section shall be a resolution officer. The commission shall provide the parties with the names of five individuals qualified to serve as the resolution officer. If the parties cannot agree on an individual, each party shall alternately strike names. The remaining individual shall serve as the resolution officer.

(b) The resolution officer may:

- (i) Determine whether the issues are ready for adjudication;
- (ii) Identify for resolution terms and conditions of employment that are in dispute and which were negotiated in good faith but upon which no agreement was reached;
- (iii) Accept stipulations;
- (iv) Schedule hearings;
- (v) Prescribe rules of conduct for conferences;
- (vi) Order additional mediation if necessary;
- (vii) Take any other action which may aid in resolution of the industrial dispute; and
- (viii) Consult with a party ex parte only with the concurrence of all parties.

(c) The resolution officer shall choose the most reasonable final offer on each issue in dispute. In making such choice, he or she shall consider factors relevant to collective bargaining between public employers and public employees, including comparable rates of pay and conditions of employment as described in subsection (1) of section 48-818. The resolution officer shall not apply strict rules of evidence. Persons who are not attorneys may present cases to the resolution officer.

(d) If either party to a resolution officer proceeding is dissatisfied with the resolution officer's decision, such party shall have the right to file an action with the commission seeking a determination of terms and conditions of employment pursuant to subsection (1) of section 48-818. Such action shall not constitute an appeal of the resolution officer's decision, but rather shall be heard by the commission as an action brought pursuant to subsection (1) of section 48-818. The commission shall resolve, pursuant to the mandates of such section, all of the issues identified by either party and which were recognized by the resolution officer as an industrial dispute. If parties have not filed with the commission pursuant to subsection (6) of this section, the decision of the resolution officer shall be deemed final and binding.

(4) For purposes of this section, issue means broad subjects of negotiation which are presented to the resolution officer pursuant to this section. All aspects of wages are a single issue, all aspects of insurance are a single issue, and all other subjects of negotiations classified in broad categories are single issues.

(5) On or before March 25 of the year preceding the contract year in question or within twenty-five days after the certification of the amounts to be distributed to each local system and each school district pursuant to the Tax Equity and

Educational Opportunities Support Act as provided in section 79-1022 for the contract year in question, whichever occurs last in time, negotiations, mediation, and factfinding shall end.

(6) If an agreement for the contract year in question has not been achieved on or before the date for negotiation, mediation, or factfinding to end in subsection (5) of this section, either party may, within fourteen days after such date, file a petition with the commission pursuant to section 48-811 and subsection (1) of section 48-818 to resolve the industrial dispute for the contract year in question. The commission shall render a decision on such industrial dispute on or before September 15 of the contract year in question.

(7) Any existing collective-bargaining agreement will continue in full force and effect until superseded by further agreement of the parties or by an order of the commission. The parties may continue to negotiate unresolved issues by mutual agreement while the matter is pending with the commission.

(8) All collective-bargaining agreements shall be written and executed by representatives of the governing board and representatives of the certificated and instructional employees' bargaining unit. The agreement shall contain at a minimum the following:

(a) A salary schedule or objective method of determining salaries;

(b) A description of benefits being provided or agreed upon including a specific level of coverage provided in any group insurance plan, a dollar amount, or percentage of premiums to be paid, and by whom; and

(c) A provision that the existing agreement will continue until replaced by a successor agreement or as amended by a final order of the commission.

**Source:** Laws 2011, LB397, § 11.

#### Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

### **48-818.02 School district, educational service unit, or community college; total compensation; considerations.**

When determining total compensation pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall consider the employer's contribution to retirement plans and health insurance premiums, premium equivalent payments, or cash equivalent payments and any other costs, including Federal Insurance Contributions Act contributions, associated with providing such benefits.

**Source:** Laws 2011, LB397, § 12.

### **48-818.03 School district, educational service unit, or community college; wage rates; commission; duties; orders authorized.**

When establishing wage rates pursuant to subsection (1) of section 48-818 for a school district, educational service unit, or community college with their certificated and instructional employees, the commission shall determine whether the total compensation of the members of the bargaining unit or classification falls within a ninety-eight percent to one hundred two percent range of the array's midpoint. If the total compensation falls within the ninety-eight percent to one hundred two percent range, the commission shall order no

change in wage rates. If the total compensation is less than ninety-eight percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint. If the total compensation is more than one hundred two percent of the midpoint, the commission shall enter an order decreasing wage rates to one hundred two percent of the midpoint. If the total compensation is more than one hundred seven percent of the midpoint, the commission shall enter an order reducing wage rates to one hundred two percent of the midpoint in three equal annual reductions. If the total compensation is less than ninety-three percent of the midpoint, the commission shall enter an order increasing wage rates to ninety-eight percent of the midpoint in three equal annual increases. If the commission finds that the year in dispute occurred during a time of recession, the applicable range will be ninety-five percent to one hundred two percent. For purposes of this section, recession occurrence means the two nearest quarters in time, excluding the immediately preceding quarter, to the effective date of the contract term in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year. Each of these receipts shall be rate and base adjusted for state law changes. The Department of Revenue shall report and publish such receipts on a quarterly basis.

**Source:** Laws 2011, LB397, § 13.

**48-824 Labor negotiations; prohibited practices.**

(1) It is a prohibited practice for any public employer, public employee, public employee organization, or collective-bargaining agent to refuse to negotiate in good faith with respect to mandatory topics of bargaining.

(2) It is a prohibited practice for any public employer or the public employer's negotiator to:

(a) Interfere with, restrain, or coerce employees in the exercise of rights granted by the Industrial Relations Act;

(b) Dominate or interfere in the administration of any public employee organization;

(c) Encourage or discourage membership in any public employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment;

(d) Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under the Industrial Relations Act or because the public employee has formed, joined, or chosen to be represented by any public employee organization;

(e) Refuse to negotiate collectively with representatives of collective-bargaining agents as required by the Industrial Relations Act;

(f) Deny the rights accompanying certification or recognition granted by the Industrial Relations Act; and

(g) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(3) It is a prohibited practice for any public employee, public employee organization, or bargaining unit or for any representative or collective-bargaining agent to:

(a) Interfere with, restrain, coerce, or harass any public employee with respect to any of the public employee's rights granted by the Industrial Relations Act;

(b) Interfere with, restrain, or coerce a public employer with respect to rights granted by the Industrial Relations Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances;

(c) Refuse to bargain collectively with a public employer as required by the Industrial Relations Act; and

(d) Refuse to participate in good faith in any impasse procedures for public employees as set forth in the Industrial Relations Act.

(4) The expressing of any view, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, is not evidence of any unfair labor practice under any of the provisions of the Industrial Relations Act if such expression contains no threat of reprisal or force or promise of benefit.

**Source:** Laws 1995, LB 382, § 1; Laws 2011, LB397, § 14.

**48-838 Collective bargaining; questions of representation; elections; non-member employee duty to reimburse; when.**

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of public employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for public employees, except that in no event shall a contract between a public employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent public employees, nor shall any contract bar for more than three years a petition by public employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the public employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the public employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of public employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing



that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any public employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting public employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

**Source:** Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7; Laws 2011, LB397, § 15.

#### Cross References

State Employees Collective Bargaining Act, see section 81-1369.

### **48-839 Changes made by Laws 2011, LB397; applicability.**

Changes made to the Industrial Relations Act by Laws 2011, LB397 shall apply to petitions filed with the commission on or after October 1, 2011, except for petitions filed involving school districts, educational service units, and community colleges with their certificated and instructional employees for which such changes shall apply on or after July 1, 2012.

**Source:** Laws 2011, LB397, § 16.

## **ARTICLE 11**

### **NEBRASKA FAIR EMPLOYMENT PRACTICE ACT**

#### Section

48-1102. Terms, defined.

48-1107.01. Unlawful employment practice for covered entity.

48-1107.02. Qualified individual with a disability; individual who is pregnant, who has given birth, or who has a related medical condition; discrimination, defined.

## Section

- 48-1109. Repealed. Laws 2015, LB 627, § 7.
- 48-1111. Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions.
- 48-1117. Commission; powers; duties; enumerated.

**48-1102 Terms, defined.**

For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

(1) Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;

(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Covered entity shall mean an employer, an employment agency, a labor organization, or a joint labor-management committee;

(6) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(7) Employee shall mean an individual employed by an employer;

(8) Commission shall mean the Equal Opportunity Commission;

(9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs;

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

(c) Nothing in this subdivision shall be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program or otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use but is not engaging in such use;

(11) Reasonable accommodation, with respect to disability, shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation, with respect to pregnancy, childbirth, or related medical conditions, shall include acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light-duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for breast-feeding or expressing breast milk. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, and the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, and the

geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(12) Marital status shall mean the status of a person whether married or single;

(13) Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions;

(14) Harass because of sex shall include making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature if (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(15) Unlawful under federal law or the laws of this state shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law;

(16) Drug shall mean a controlled substance as defined in section 28-401;

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law; and

(18) Individual who is pregnant, who has given birth, or who has a related medical condition shall mean an individual with a known limitation who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds, desires, or may be temporarily assigned to. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

**Source:** Laws 1965, c. 276, § 2, p. 783; Laws 1967, c. 306, § 1, p. 829; Laws 1969, c. 120, § 21, p. 551; Laws 1973, LB 265, § 2; Laws 1973, LB 266, § 2; Laws 1977, LB 161, § 1; Laws 1979, LB 67, § 1; Laws 1983, LB 626, § 74; Laws 1984, LB 14A, § 1; Laws 1985, LB 324, § 1; Laws 1986, LB 1108, § 1; Laws 1989, LB 176, § 1; Laws 1993, LB 121, § 297; Laws 1993, LB 124, § 1; Laws 1993, LB 360, § 3; Laws 2004, LB 1083, § 98; Laws 2015, LB627, § 1.

#### Cross References

**Nebraska Investment Finance Authority Act**, see section 58-201.

**Uniform Controlled Substances Act**, see section 28-401.01.

#### **48-1107.01 Unlawful employment practice for covered entity.**

It shall be an unlawful employment practice for a covered entity to:

(1) Discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring,

advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment; or

(2) Discriminate against an individual who is pregnant, who has given birth, or who has a related medical condition in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

**Source:** Laws 1993, LB 360, § 5; Laws 2015, LB627, § 2.

**48-1107.02 Qualified individual with a disability; individual who is pregnant, who has given birth, or who has a related medical condition; discrimination, defined.**

(1) When referring to a qualified individual with a disability, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified individual with a disability to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of disability or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Excluding or otherwise denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual with a disability is known to have a relationship or association;

(e) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(f) Denying employment opportunities to a job applicant or employee who is otherwise a qualified individual with a disability if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(g) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(h) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure rather

than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant except when such skills are the factors that the test purports to measure;

(i) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination regardless of disability;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act; and

(j) Requiring a medical examination or making inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (1)(i)(iii)(B) and (C) of this section.

(2) When referring to an individual who is pregnant, who has given birth, or who has a related medical condition, discrimination shall include:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the pregnancy, childbirth, or related medical conditions of the applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting an individual who is pregnant, who has given birth, or who has a related medical condition to discrimination in the application or employment process, including a relationship with an employment agency, a



labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;

(c) Utilizing standards, criteria, or methods of administration (i) that have the effect of discrimination on the basis of pregnancy, childbirth, or related medical conditions or (ii) that perpetuate the discrimination against others who are subject to common administrative control;

(d) Not making reasonable accommodations to the known physical limitations of an individual who is pregnant, who has given birth, or who has a related medical condition and who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

(e) Denying employment opportunities to a job applicant or employee who is pregnant, who has given birth, or who has a related medical condition if the denial is based upon the need of such covered entity to make reasonable accommodation to the physical limitations due to the pregnancy, childbirth, or related medical conditions of the employee or applicant;

(f) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual or a class of individuals who are pregnant, who have given birth, or who have a related medical condition unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(g) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is pregnant, has given birth, or has a related medical condition, except that:

(i) A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

(A) All entering employees are subjected to such an examination;

(B) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that (I) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, (II) first-aid and safety personnel may be informed, when appropriate, if the pregnancy, childbirth, or related medical conditions might require emergency treatment, (III) government officials investigating compliance with the Nebraska Fair Employment Practice Act shall be provided relevant information on request, and (IV) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

(C) The results of the examination are used only in a manner not inconsistent with the Nebraska Fair Employment Practice Act;

(h) Requiring a medical examination or making inquiries of an employee as to whether the employee is pregnant, has given birth, or has a related medical condition unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the worksite and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (2)(g)(iii)(B) and (C) of this section;

(i) Requiring an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee; and

(j) Taking adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

**Source:** Laws 1993, LB 360, § 6; Laws 2015, LB627, § 3.

**Cross References**

Nebraska Workers' Compensation Act, see section 48-1,110.

**48-1109 Repealed. Laws 2015, LB 627, § 7.**

**48-1111 Different standards of compensation, conditions, or privileges of employment; lawful employment practices; effect of pregnancy and related medical conditions.**

(1) Except as otherwise provided in the Nebraska Fair Employment Practice Act, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if such differences are not the result of an intention to discriminate because of race, color, religion, sex, disability, marital status, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test if such test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, disability, marital status, or national origin.

It shall not be an unlawful employment practice for a covered entity to deny privileges of employment to an individual with a disability when the qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability:

(a) Have been shown to be job-related and consistent with business necessity and such performance cannot be accomplished by reasonable accommodation, as required by the Nebraska Fair Employment Practice Act and the federal Americans with Disabilities Act of 1990; or

(b) Include a requirement that an individual shall not pose a direct threat, involving a significant risk to the health or safety of other individuals in the workplace, that cannot be eliminated by reasonable accommodation.

It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.

(2) Except as otherwise provided in the Nebraska Fair Employment Practice Act, women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of employee benefits, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to provide otherwise.

This section shall not require an employer to provide employee benefits for abortion except when medical complications have arisen from an abortion.

Nothing in this section shall preclude an employer from providing employee benefits for abortion under fringe benefit programs or otherwise affect bargaining agreements in regard to abortion.

**Source:** Laws 1965, c. 276, § 11, p. 787; Laws 1973, LB 266, § 8; Laws 1977, LB 161, § 7; Laws 1984, LB 14A, § 2; Laws 1993, LB 360, § 11; Laws 2015, LB627, § 4.

**48-1117 Commission; powers; duties; enumerated.**

The commission shall have the following powers and duties:

(1) To receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state;

(2) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, and take the testimony of any person under oath and, in connection therewith, to require the production for examination of any books and papers relevant to any allegation of unlawful employment practice pending before the commission. The commission may make rules as to the issuance of subpoenas, subject to the approval by a constitutional majority of the elected members of the Legislature;

(3) To cooperate with the federal government and with local agencies to effectuate the purposes of the Nebraska Fair Employment Practice Act, including the sharing of information possessed by the commission on a case that has also been filed with the federal government or local agencies if both the employer and complainant have been notified of the filing;

(4) To attempt to eliminate unfair employment practices by means of conference, mediation, conciliation, arbitration, and persuasion;

(5) To require that every employer, employment agency, and labor organization subject to the act shall (a) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (b) preserve such records for such periods, and (c) make such reports therefrom, as the commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of the act or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the act which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to

carry out the purposes of the act, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and to furnish to the commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may either apply to the commission for an exemption from the application of such regulation or order or bring a civil action in the district court for the district where such records are kept. If the commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the commission or the court, as the case may be, may grant appropriate relief;

(6) To report, not less than once every two years, to the Clerk of the Legislature and the Governor, on the hearings it has conducted and the decisions it has rendered, the other work performed by it to carry out the purposes of the act, and to make recommendations for such further legislation concerning abuses and discrimination because of race, color, religion, sex, disability, marital status, or national origin, as may be desirable. The report shall also include the number of complaints filed under the act alleging a violation of subdivision (2) of section 48-1107.01 and the resolution of such complaints. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of the report required by this subdivision by making a request for it to the chairperson of the commission; and

(7) To adopt and promulgate rules and regulations necessary to carry out the duties prescribed in the act.

**Source:** Laws 1965, c. 276, § 17, p. 790; Laws 1973, LB 266, § 11; Laws 1977, LB 161, § 11; Laws 1979, LB 322, § 18; Laws 1981, LB 545, § 11; Laws 1984, LB 14A, § 3; Laws 1993, LB 124, § 3; Laws 1993, LB 360, § 15; Laws 2012, LB782, § 63; Laws 2015, LB627, § 5.

## ARTICLE 12

### WAGES

#### (a) MINIMUM WAGES

Section  
48-1203. Wages; minimum rate.

#### (b) SEX DISCRIMINATION

48-1220. Terms, defined.

#### (c) WAGE PAYMENT AND COLLECTION

48-1228. Act, how cited.

48-1229. Terms, defined.

48-1230. Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.

48-1231. Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.

48-1233. Commissioner of Labor; enforcement powers.

## Section

48-1234. Commissioner of Labor; citation; notice of penalty; employer contest; hearing.

## (a) MINIMUM WAGES

**48-1203 Wages; minimum rate.**

(1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

(a) Seven dollars and twenty-five cents per hour through December 31, 2014;

(b) Eight dollars per hour on and after January 1, 2015, through December 31, 2015; and

(c) Nine dollars per hour on and after January 1, 2016.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

**Source:** Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22; Initiative Law 2014, No. 425, § 1.

## (b) SEX DISCRIMINATION

**48-1220 Terms, defined.**

As used in sections 48-1219 to 48-1227.01, unless the context otherwise requires:

(1) Employee shall mean any individual employed by an employer, including individuals employed by the state or any of its political subdivisions including public bodies;

(2) Employer shall mean any person engaged in an industry who has two or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, and includes the State of Nebraska, its governmental agencies, and political subdivisions, regardless of the number of employees, but such term shall not include the United States, a corporation wholly owned by the government of the United States, or an Indian tribe;

(3) Wage rate shall mean all compensation for employment including payment in kind and amounts paid by employers for employee benefits as defined by the commission in regulations issued under sections 48-1219 to 48-1227;

- (4) Employ shall include to suffer or permit to work;
- (5) Commission shall mean the Equal Opportunity Commission; and
- (6) Person shall include one or more individuals, partnerships, limited liability companies, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

**Source:** Laws 1969, c. 389, § 2, p. 1366; Laws 1983, LB 424, § 5; Laws 1983, LB 626, § 75; Laws 1993, LB 121, § 299; Laws 2005, LB 10, § 1; Laws 2016, LB83, § 1.  
Effective date July 21, 2016.

#### Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

### (c) WAGE PAYMENT AND COLLECTION

#### **48-1228 Act, how cited.**

Sections 48-1228 to 48-1234 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

**Source:** Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1; Laws 2014, LB560, § 1.

#### **48-1229 Terms, defined.**

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(2) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(3) Federally insured financial institution means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States Government;

(4) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs;



(5) Payroll debit card means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. Payroll debit card includes payroll debit cards, payroll cards, and paycards; and

(6) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

**Source:** Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2; Laws 2014, LB765, § 1.

**48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.**

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has a written agreement with the employee to deduct, withhold, or divert.

(2) On each regular payday, the employer shall deliver or make available to each employee, by mail or electronically, or shall provide at the employee's normal place of employment during employment hours for all shifts a wage statement showing, at a minimum, the identity of the employer, the hours for which the employee was paid, the wages earned by the employee, and deductions made for the employee. However, the employer need not provide information on hours worked for employees who are exempt from overtime under the federal Fair Labor Standards Act of 1938, under 29 C.F.R. part 541, unless the employer has established a policy or practice of paying to or on behalf of exempt employees overtime, or bonus or a payment based on hours worked, whereupon the employer shall send or otherwise provide a statement to the exempt employees showing the hours the employee worked or the payments made to the employee by the employer, as applicable.

(3) When an employer elects to pay wages with a payroll debit card, the employer shall comply with the compulsory-use requirements prescribed in 15 U.S.C. 1693k. Additionally, the employer shall allow an employee at least one

means of fund access withdrawal per pay period, but not more frequently than once per week, at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement. An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages with a payroll debit card.

(4) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

**Source:** Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3; Laws 2010, LB884, § 2; Laws 2014, LB560, § 4; Laws 2014, LB765, § 2.

**48-1231 Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.**

(1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and secures judgment on the claim, such employee shall be entitled to recover (a) the full amount of the judgment and all costs of such suit and (b) if such employee has employed an attorney in the case, an amount for attorney's fees assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and the plaintiff recovers a judgment, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court, which fees shall not be less than twenty-five percent of the unpaid wages. If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this section. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) An employer who fails to furnish a wage statement under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

**Source:** Laws 1977, LB 220A, § 4; Laws 1991, LB 311, § 2; Laws 2010, LB884, § 3; Laws 2014, LB560, § 5.

**48-1233 Commissioner of Labor; enforcement powers.**

The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of the Nebraska Wage Payment and Collection Act. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the act when the information sought is relevant to a lawful investigative purpose and is reasonable in scope.

**Source:** Laws 2014, LB560, § 2.

**48-1234 Commissioner of Labor; citation; notice of penalty; employer contest; hearing.**

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Wage Payment and Collection Act, other than a violation of subsection (2) of section 48-1230.

(2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

**Source:** Laws 2014, LB560, § 3.

**Cross References**

Administrative Procedure Act, see section 84-920.

**ARTICLE 14****DEFERRED COMPENSATION****Section**

48-1401. Political subdivisions; exception; deferred compensation plan; provisions; investment.

**48-1401 Political subdivisions; exception; deferred compensation plan; provisions; investment.**

(1) Any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, may enter into an agreement to defer a portion of any individual's compensation derived from such county, municipality, or other political subdivision, instrumentality, or agency to a future period in time pursuant to section 457 of the Internal Revenue Code. Such deferred compensation plan shall be voluntary and shall be available to all regular employees and elected officials.

(2) The compensation to be deferred may never exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such a plan.

(3) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall be held in trust for the exclusive benefit of participants and their beneficiaries by the county, municipality, or other political subdivision, instrumentality, or agency until such time as payments are made under the terms of the deferred compensation plan.

(4) The county, municipality, or other political subdivision, instrumentality, or agency shall designate its treasurer or an equivalent official, including the State Treasurer, to be the custodian of the funds and securities of the deferred compensation plan.

(5) The county, municipality, or other political subdivision, instrumentality, or agency may invest the compensation to be deferred under an agreement in or with: (a) Annuities; (b) mutual funds; (c) banks; (d) savings and loan associations; (e) trust companies qualified to act as fiduciaries in this state; (f) an organization established for the purpose of administering public employee deferred compensation retirement plans and authorized to do business in the State of Nebraska; or (g) investment advisers as defined in the federal Investment Advisers Act of 1940.

(6) The deferred compensation program shall exist and serve in addition to, and shall not be a part of, any existing retirement or pension system provided for state, county, municipal, or other political subdivision, instrumentality, or agency employees, or any other benefit program.

(7) Any compensation deferred under such a deferred compensation plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(8) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(9) The state, county, municipality, or other political subdivision, instrumentality, or agency shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(10) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(11) Nothing contained in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, and any such plan is hereby authorized and approved.

(12) If a county has not established a deferred compensation plan pursuant to this section, each individual may require that the county enter into an agreement with the individual to defer a portion of such individual's compensation and place it under the management and supervision of the state deferred compensation plan created pursuant to sections 84-1504 to 84-1506. If such an agreement is made, the county shall designate the State Treasurer as custodian of such deferred compensation funds and such deferred compensation funds

shall become a part of the trust administered by the Public Employees Retirement Board pursuant to sections 84-1504 to 84-1506.

(13) For purposes of this section, individual means (a) any person designated by the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, as a permanent part-time or full-time employee of the county, municipality, or other political subdivision, instrumentality, or agency and (b) a person under contract providing services to the county, municipality, or other political subdivision, instrumentality, or agency of the State of Nebraska, except any agency subject to sections 84-1504 to 84-1506 or section 85-106, 85-320, or 85-606.01, and who has entered into a contract with such county, municipality, political subdivision, instrumentality, or agency to have compensation deferred prior to August 28, 1999.

**Source:** Laws 1977, LB 328, § 1; Laws 1997, LB 623, § 11; Laws 1999, LB 703, § 8; Laws 2012, LB916, § 18; Laws 2015, LB40, § 8.

## ARTICLE 16

### NEBRASKA WORKFORCE INVESTMENT ACT

#### (b) NEBRASKA WORKFORCE INVESTMENT ACT

#### Section

- 48-1616. Repealed. Laws 2015, LB 334, § 3.
- 48-1617. Repealed. Laws 2015, LB 334, § 3.
- 48-1618. Repealed. Laws 2015, LB 334, § 3.
- 48-1619. Repealed. Laws 2015, LB 334, § 3.
- 48-1620. Repealed. Laws 2015, LB 334, § 3.
- 48-1621. Repealed. Laws 2015, LB 334, § 3.
- 48-1622. Repealed. Laws 2015, LB 334, § 3.
- 48-1623. Repealed. Laws 2015, LB 334, § 3.
- 48-1624. Repealed. Laws 2015, LB 334, § 3.
- 48-1625. Repealed. Laws 2015, LB 334, § 3.
- 48-1626. Repealed. Laws 2015, LB 334, § 3.
- 48-1627. Repealed. Laws 2015, LB 334, § 3.

#### (b) NEBRASKA WORKFORCE INVESTMENT ACT

**48-1616 Repealed. Laws 2015, LB 334, § 3.**

**48-1617 Repealed. Laws 2015, LB 334, § 3.**

**48-1618 Repealed. Laws 2015, LB 334, § 3.**

**48-1619 Repealed. Laws 2015, LB 334, § 3.**

**48-1620 Repealed. Laws 2015, LB 334, § 3.**

**48-1621 Repealed. Laws 2015, LB 334, § 3.**

**48-1622 Repealed. Laws 2015, LB 334, § 3.**

**48-1623 Repealed. Laws 2015, LB 334, § 3.**

**48-1624 Repealed. Laws 2015, LB 334, § 3.**

**48-1625 Repealed. Laws 2015, LB 334, § 3.**

**48-1626 Repealed. Laws 2015, LB 334, § 3.**

**48-1627 Repealed. Laws 2015, LB 334, § 3.****ARTICLE 17****FARM LABOR CONTRACTORS**

## Section

48-1706. Application fee.

48-1707. Repealed. Laws 2016, LB270, § 7.

**48-1706 Application fee.**

Each application shall be accompanied by a fee. The Commissioner of Labor shall establish the amount of the fee, which shall not exceed seven hundred fifty dollars, by rule and regulation. The fee shall be established with due regard for the costs of administering the Farm Labor Contractors Act. All fees so collected shall be deposited in the Contractor and Professional Employer Organization Registration Cash Fund.

**Source:** Laws 1987, LB 344, § 6; Laws 2002, LB 931, § 3; Laws 2016, LB270, § 2.

Operative date July 1, 2016.

**48-1707 Repealed. Laws 2016, LB270, § 7.**

Operative date July 1, 2016.

**ARTICLE 21****CONTRACTOR REGISTRATION**

## Section

48-2107. Fees; exemption.

48-2115. Repealed. Laws 2016, LB270, § 7.

**48-2107 Fees; exemption.**

(1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee of forty dollars. The commissioner may adopt and promulgate 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 commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor and Professional Employer Organization Registration Cash Fund.

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2)(a) of this section shall be a violation of section 28-915.01.



(3) The commissioner shall charge an additional fee of twenty-five dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

**Source:** Laws 1994, LB 248, § 7; Laws 2008, LB204, § 4; Laws 2009, LB162, § 5; Laws 2016, LB270, § 3.  
Operative date July 1, 2016.

**48-2115 Repealed. Laws 2016, LB270, § 7.**  
Operative date July 1, 2016.

## ARTICLE 22

### NON-ENGLISH-SPEAKING EMPLOYEES

#### Section

48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.

**48-2213 Meatpacking industry worker rights coordinator; established; powers and duties.**

(1) The position of meatpacking industry worker rights coordinator is established within the department. The coordinator shall be appointed by the Governor.

(2) The duties of the coordinator shall be to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights, which rights are outlined as follows:

- (a) The right to organize;
- (b) The right to a safe workplace;
- (c) The right to adequate facilities and the opportunity to use them;
- (d) The right to complete information;
- (e) The right to understand the information provided;
- (f) The right to existing state and federal benefits and rights;
- (g) The right to be free from discrimination;
- (h) The right to continuing training, including training of supervisors;
- (i) The right to compensation for work performed; and
- (j) The right to seek state help.

(3) The coordinator and his or her designated representatives shall have access to all meatpacking operations in the State of Nebraska at any time meatpacking products are being processed and industry workers are on the job.

(4) Necessary office space, furniture, equipment, and supplies as well as necessary assistance for the coordinator shall be provided by the commissioner.

(5) Preference shall be given to applicants for the coordinator position who are fluent in the Spanish language.

(6) The coordinator shall, on or before December 1 of each year, submit a report to the members of the Legislature and the Governor regarding any

recommended actions the coordinator deems necessary or appropriate to provide for the fair treatment of workers in the meatpacking industry. The report submitted to the members of the Legislature shall be submitted electronically.

**Source:** Laws 2000, LB 1363, § 4; R.S.Supp.,2002, § 81-404; Laws 2003, LB 418, § 7; Laws 2012, LB782, § 65.

### ARTICLE 23

#### NEW HIRE REPORTING ACT

Section

48-2302. Terms, defined.

48-2307. Department; report.

#### **48-2302 Terms, defined.**

For purposes of the New Hire Reporting Act:

(1) Date of hire means the day an employee begins employment with an employer;

(2) Department means the Department of Health and Human Services;

(3) Employee means an independent contractor or a person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated;

(4) Employer means any individual, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of the state or federal government, labor organization, or any other entity with an employee;

(5) Income means compensation paid, payable, due, or to be due for labor or personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise;

(6) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government; and

(7) Rehire means the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as an unpaid medical leave, an unpaid leave of absence, a temporary layoff of less than sixty days in length, or an absence for disability or maternity.

**Source:** Laws 1997, LB 752, § 41; Laws 2009, LB288, § 16; Laws 2012, LB1058, § 12.

#### **48-2307 Department; report.**

The department shall issue electronically a report to the Legislature on or before January 31 of each year which discloses the number of employees

reported to the department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

**Source:** Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221; Laws 2012, LB782, § 66.

## ARTICLE 27

### PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT

Section

48-2710. Fees.

#### 48-2710 Fees.

(1) The department shall adopt a schedule of fees for initial registration, annual registration renewal, and limited registration, not to exceed two thousand five hundred dollars for initial registration, one thousand five hundred dollars for annual registration renewal, and one thousand dollars for limited registration. Such fees shall not exceed those reasonably necessary for the administration of the Professional Employer Organization Registration Act.

(2) Fees imposed pursuant to this section shall be remitted to the State Treasurer for credit to the Contractor and Professional Employer Organization Registration Cash Fund.

**Source:** Laws 2010, LB579, § 10; Laws 2016, LB270, § 4.  
Operative date July 1, 2016.

## ARTICLE 28

### NEBRASKA INNOVATION AND HIGH WAGE EMPLOYMENT ACT

Section

48-2801. Repealed. Laws 2015, LB 5, § 1.

48-2802. Repealed. Laws 2015, LB 5, § 1.

48-2803. Repealed. Laws 2015, LB 5, § 1.

48-2804. Repealed. Laws 2015, LB 5, § 1.

48-2805. Repealed. Laws 2015, LB 5, § 1.

**48-2801 Repealed. Laws 2015, LB 5, § 1.**

**48-2802 Repealed. Laws 2015, LB 5, § 1.**

**48-2803 Repealed. Laws 2015, LB 5, § 1.**

**48-2804 Repealed. Laws 2015, LB 5, § 1.**

**48-2805 Repealed. Laws 2015, LB 5, § 1.**

## ARTICLE 29

### EMPLOYEE CLASSIFICATION ACT

Section

48-2909. Report; contents.

#### 48-2909 Report; contents.

The department shall provide electronically an annual report to the Legislature regarding compliance with and enforcement of the Employee Classification Act. The report shall include, but not be limited to, the number of reports

received from both its hotline and web site, the number of investigated reports, the findings of the reports, the amount of combined tax, interest, and fines collected, the number of referrals to the Department of Revenue, Nebraska Workers' Compensation Court, and appropriate prosecuting authority, and the outcome of such referrals.

**Source:** Laws 2010, LB563, § 9; Laws 2012, LB782, § 67.

### ARTICLE 31

#### SUBSIDIZED EMPLOYMENT PILOT PROGRAM

##### Section

- 48-3101. Legislative findings.
- 48-3102. Terms, defined.
- 48-3103. Subsidized Employment Pilot Program; created; Department of Health and Human Services; duties; Department of Labor; powers; nonprofit organization; duties; report; contents.
- 48-3104. Subsidies.
- 48-3105. Nonprofit organization; gather and report performance measures.
- 48-3106. Termination.
- 48-3107. Rules and regulations.
- 48-3108. Appropriations; legislative intent; use.

##### **48-3101 Legislative findings.**

The Legislature finds that:

- (1) Work experience is necessary to obtain employment in a competitive job market;
- (2) Businesses find creating capacity to add employees during a time of economic recovery challenging;
- (3) Subsidized employment can benefit employers and workers in need of experience;
- (4) Increasing opportunities for public assistance recipients to engage in meaningful workplace experience can significantly contribute to their long-term employability;
- (5) Providing subsidized employment can also help businesses to grow; and
- (6) States nationwide provide subsidized employment to public assistance recipients in order to aid employers in developing work placements for public assistance recipients.

**Source:** Laws 2013, LB368, § 1.

##### **48-3102 Terms, defined.**

For purposes of sections 48-3101 to 48-3107:

- (1) Aid to dependent children program means the program described in section 43-512; and
- (2) Participant means an individual who qualifies for the aid to dependent children program services with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline.

**Source:** Laws 2013, LB368, § 2.

**48-3103 Subsidized Employment Pilot Program; created; Department of Health and Human Services; duties; Department of Labor; powers; nonprofit organization; duties; report; contents.**

(1) The Subsidized Employment Pilot Program is created within the Department of Health and Human Services to provide opportunities for employers and participants in the aid to dependent children program to achieve subsidized employment.

(2) The department shall establish a partnership between an entity which contracts with the department pursuant to section 68-1722 to provide case management services in the aid to dependent children program and a nonprofit organization.

(3) The Department of Labor may establish a partnership with the nonprofit organization described in subsection (2) of this section to assist in the referral of participants and employers for the pilot program.

(4) The nonprofit organization described in subsection (2) of this section shall:

(a) Establish an application process for employers to participate in the pilot program. Such application process shall include, but not be limited to, a requirement that employer applicants submit a plan including, but not limited to, the following criteria:

(i) Initial client assessment, job development, job placement, and employment retention services;

(ii) A strategy to place participants in in-demand jobs; and

(iii) Other program guidelines or criteria for the pilot program as needed;

(b) Recruit participants for the pilot program, with assistance from the Department of Health and Human Services, the Department of Labor, and an entity which contracts with the department pursuant to section 68-1722 to provide case management services in the aid to dependent children program;

(c) Recruit employers for the pilot program, with assistance from the Department of Labor;

(d) Determine participant eligibility for the pilot program and assist with employer and employee matching;

(e) Ensure that the pilot program operates in both rural and urban areas. To ensure that the pilot program operates in both rural and urban areas, such nonprofit organization may enter into subcontracts with other nonprofit entities;

(f) Gather the data and performance measures as described in section 48-3105; and

(g) Submit an electronic report on or before September 15 of each year to the Health and Human Services Committee of the Legislature containing the data and performance measures described in section 48-3105.

**Source:** Laws 2013, LB368, § 3.

**48-3104 Subsidies.**

Subsidies under the Subsidized Employment Pilot Program created pursuant to section 48-3103 shall be capped at the prevailing wage and shall be provided

for no more than forty hours per week for not more than six months, on the following scale:

- (1) One hundred percent in months one and two;
- (2) Seventy-five percent in month three;
- (3) Fifty percent in months four and five; and
- (4) Twenty-five percent in month six.

**Source:** Laws 2013, LB368, § 4.

**48-3105 Nonprofit organization; gather and report performance measures.**

The nonprofit organization described in subsection (2) of section 48-3103 shall ensure the gathering and reporting of the following performance measures:

- (1) Number of employees participating in the Subsidized Employment Pilot Program;
- (2) Length of time each employee has participated in the program;
- (3) Wages paid to employees in the program;
- (4) Employment status of each employee at completion of his or her participation in the program, six months after such completion, and twelve months after such completion;
- (5) Wages of each employee at completion of his or her participation in the program, six months after such completion, and twelve months after such completion;
- (6) Number of employers participating in the program; and
- (7) Length of time each employer has participated in the program.

**Source:** Laws 2013, LB368, § 5.

**48-3106 Termination.**

The Subsidized Employment Pilot Program created under section 48-3103 terminates on July 1, 2018.

**Source:** Laws 2013, LB368, § 6.

**48-3107 Rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out sections 48-3101 to 48-3106.

**Source:** Laws 2013, LB368, § 7.

**48-3108 Appropriations; legislative intent; use.**

It is the intent of the Legislature to appropriate one million dollars each fiscal year for FY2014-15 to FY2017-18 from funds available to the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., as such sections existed on January 1, 2013, to carry out sections 48-3101 to 48-3106. No more than ten percent of the funds appropriated to carry out sections 48-3101 to 48-3106 shall be used for administrative costs. Administrative cost shall not be defined to include cost for service delivery. Any of such funds which are



unexpended on June 30, 2018, shall lapse to the federal Temporary Assistance for Needy Families program on such date.

**Source:** Laws 2013, LB368, § 8.

**ARTICLE 32**  
**FACILITATING BUSINESS RAPID RESPONSE**  
**TO STATE DECLARED DISASTERS ACT**

Section

48-3201. Act, how cited.

48-3202. Terms, defined.

48-3203. Out-of-state business; applicability of state or local employment, licensing, or registration requirements; out-of-state employee; how treated.

48-3204. Out-of-state business; notification to Department of Revenue; information; contents; registered business; duties.

48-3205. Work pursuant to request for bid or request for proposals; how treated.

**48-3201 Act, how cited.**

Sections 48-3201 to 48-3205 shall be known and may be cited as the Facilitating Business Rapid Response to State Declared Disasters Act.

**Source:** Laws 2016, LB913, § 1.

Effective date July 21, 2016.

**48-3202 Terms, defined.**

For purposes of the Facilitating Business Rapid Response to State Declared Disasters Act:

(1) Declared state disaster or emergency means a disaster or emergency event (a) for which a Governor's state of emergency proclamation has been issued or (b) that the President of the United States has declared to be a major disaster or emergency;

(2) Disaster period means the period of time that begins ten days before the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or emergency, whichever occurs first, and extending for a period of sixty calendar days following the end of the period specified in the proclamation or declaration or sixty calendar days after the proclamation or declaration if no end is provided. The Governor may extend the disaster period as warranted;

(3) Infrastructure means real and personal property, including buildings, offices, power lines, cable lines, poles, communication lines, pipes, structures, equipment, and related support facilities, owned or used by a public utility, communications network, broadband or Internet service provider, cable or video service provider, natural gas distribution system, or water pipeline that provides service to more than one customer or person;

(4)(a) Out-of-state business means a business entity:

(i) That does not have a presence in the state;

(ii) That does not conduct business in the state;

(iii) That has no registrations, tax filings, or nexus in the state before the declared state disaster or emergency; and

(iv) Whose assistance in repairing, renovating, installing, or building infrastructure or rendering services or other business activities related to a declared

state disaster or emergency is requested by the state, a county, city, village, or other political subdivision of the state, or a registered business that owns or uses infrastructure.

(b) Out-of-state business includes a business entity that is affiliated with a registered business solely through common ownership as long as that business entity does not have any registrations, tax filings, or nexus in the state before the declared state disaster or emergency. For purposes of this section, a prior registration as an out-of-state business for a declared state disaster or emergency shall not be considered a registration in this state;

(5) Out-of-state employee means a nonresident individual who does not work in the state except for disaster or emergency related work during a disaster period; and

(6) Registered business means a business entity that is registered or licensed to do business in the state before the declared state disaster or emergency.

**Source:** Laws 2016, LB913, § 2.

Effective date July 21, 2016.

**48-3203 Out-of-state business; applicability of state or local employment, licensing, or registration requirements; out-of-state employee; how treated.**

(1) An out-of-state business that conducts operations within the state for purposes of assisting in repairing, renovating, installing, or building infrastructure or rendering services or other business activities related to a declared state disaster or emergency during the disaster period shall not be considered to have established a level of presence that would subject the out-of-state business or any of its out-of-state employees to any of the following state or local employment, licensing, or registration requirements:

(a) Registration with the Secretary of State;

(b) Withholding or income tax registration, filing, or remitting requirements; and

(c) Sales, use, or ad valorem tax on equipment brought into the state temporarily for use or consumption during the disaster period if such equipment does not remain in the state after the disaster period.

(2) An out-of-state employee shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes, to be subjected to tax withholdings, or to file and pay any other state or local income or withholding tax or fee for work repairing, renovating, installing, or building infrastructure or rendering services or other business activities during the disaster period.

(3) After the conclusion of a disaster period, an out-of-state business or out-of-state employee that remains in the state is fully subject to the state or local employment, licensing, or registration requirements listed in this section or that were otherwise suspended under the Facilitating Business Rapid Response to State Declared Disasters Act during the disaster period.

**Source:** Laws 2016, LB913, § 3.

Effective date July 21, 2016.

**48-3204 Out-of-state business; notification to Department of Revenue; information; contents; registered business; duties.**

(1) An out-of-state business shall provide notification to the Department of Revenue within ten days after entry to the state during a disaster period that the out-of-state business is in the state for purposes of responding to the declared state disaster or emergency. The out-of-state business shall provide to the department information related to the out-of-state business including, but not limited to, the following:

- (a) Name;
- (b) State of domicile;
- (c) Principal business address;
- (d) Federal employer identification number;
- (e) The date when the out-of-state business entered the state; and
- (f) Contact information while the out-of-state business is in this state.

(2) A registered business shall provide the notification required in subsection (1) of this section for an affiliate of the registered business that enters the state as an out-of-state business. The notification under this subsection shall also include contact information for the registered business in the state.

**Source:** Laws 2016, LB913, § 4.  
Effective date July 21, 2016.

**48-3205 Work pursuant to request for bid or request for proposals; how treated.**

The Facilitating Business Rapid Response to State Declared Disasters Act shall not grant exemptions authorized by the act to any out-of-state business performing work pursuant to a request for bid or request for proposals by a state agency or political subdivision.

**Source:** Laws 2016, LB913, § 5.  
Effective date July 21, 2016.

**ARTICLE 33**

**NEBRASKA WORKFORCE INNOVATION AND OPPORTUNITY ACT**

Section

- 48-3301. Act, how cited.
- 48-3302. Legislative findings and declarations.
- 48-3303. Career pathway, defined.
- 48-3304. Commissioner of Labor; performance report; duties.
- 48-3305. Department of Labor; powers; rules and regulations.

**48-3301 Act, how cited.**

Sections 48-3301 to 48-3305 shall be known and may be cited as the Nebraska Workforce Innovation and Opportunity Act.

**Source:** Laws 2016, LB1110, § 1.  
Effective date April 14, 2016.

**48-3302 Legislative findings and declarations.**

The Legislature finds and declares:

(1) In order for Nebraska to remain prosperous and competitive, it needs to have a well-educated and highly skilled workforce;

(2) The following principles shall guide the state's workforce investment system:

(a) Workforce investment programs and services shall be responsive to the needs of employers, workers, and students by accomplishing the following:

(i) Providing Nebraska students and workers with the skills necessary to successfully compete in the global economy;

(ii) Producing greater numbers of individuals who obtain industry-recognized certificates and career-oriented degrees in competitive and emerging industry sectors and filling critical labor market skills gaps;

(iii) Adapting to rapidly changing local and regional labor markets as specific workforce skill requirements change over time;

(iv) Preparing workers for jobs that pay well and foster economic security and upward mobility; and

(v) Aligning employment programs, resources, and planning efforts regionally around industry sectors that drive regional employment to connect services and training directly to jobs;

(b) State and local workforce development boards are encouraged to collaborate with other public and private institutions, including businesses, unions, nonprofit organizations, schools from kindergarten through grade twelve, career technical education programs, adult career technical education and basic skills programs, apprenticeships, community college career technical education and basic skills programs, entrepreneurship training programs, where appropriate, and county-based social and employment services, to better align resources across workforce, training, education, and social service delivery systems and build a well-articulated workforce investment system by accomplishing the following:

(i) Adopting local and regional training and education strategies that build on the strengths and fill the gaps in the education and workforce development pipeline in order to address the needs of job seekers, workers, and employers within regional labor markets by supporting sector strategies; and

(ii) Leveraging resources across education and workforce training delivery systems to build career pathways and fill critical skills gaps;

(c) Workforce investment programs and services shall be data-driven and evidence-based when setting priorities, investing resources, and adopting practices;

(d) Workforce investment programs and services shall develop strong partnerships with the private sector, ensuring industry involvement in needs assessment, planning, and program evaluation, and:

(i) Shall encourage industry involvement by developing strong partnerships with an industry's employers and the unions that represent the industry's workers; and

(ii) May consider the needs of employers and businesses of all sizes, including large, medium, small, and microenterprises, when setting priorities, investing resources, and adopting practices;

(e) Workforce investment programs and services shall be outcome-oriented and accountable, measuring results for program participants, including, but not limited to, outcomes related to program completion, employment, and earnings; and

(f) Programs and services shall be accessible to employers, the self-employed, workers, and students who may benefit from their operation, including individuals with employment barriers, such as persons with economic, physical, or other barriers to employment;

(3) Screening designed to detect unidentified disabilities, including learning disabilities, improves workforce preparation and enhances the use of employment and training resources;

(4) Section 134(c)(2) of the federal Workforce Innovation and Opportunity Act, 29 U.S.C. 3174(c)(2), allows for the use of funds for the initial assessment of skill levels, aptitudes, abilities, and support services, including, when appropriate, comprehensive and specialized assessments of skill levels and service needs, including, but not limited to, diagnostic testing and the use of other assessment tools and indepth interviewing and evaluation to identify employment barriers and appropriate employment goals; and

(5) One-stop career centers are encouraged to maximize the use of federal Workforce Innovation and Opportunity Act resources and other federal and state workforce development resources for screening designed to detect unidentified disabilities, and if indicated, to provide appropriate diagnostic assessment.

**Source:** Laws 2016, LB1110, § 2.  
Effective date April 14, 2016.

**48-3303 Career pathway, defined.**

For purposes of the Nebraska Workforce Innovation and Opportunity Act, career pathway means an identified series of positions, work experiences, or educational benchmarks or credentials with multiple access points that offers occupational and financial advancement within a specified career field or related fields over time. Career pathways offer combined programs of rigorous and high-quality education, training, and other services that do all of the following:

(1) Align with the skill needs of industries in the state and regional economies;

(2) Prepare an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the National Apprenticeship Act, 29 U.S.C. 50 et seq., except apprenticeships under 29 U.S.C. 3226;

(3) Include counseling to support an individual in achieving the individual's education and career goals;

(4) Include, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation;

(5) Organize education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;

(6) Enable an individual to attain a secondary school diploma or its recognized equivalent and at least one recognized postsecondary credential; and

(7) Help an individual enter or advance within a specific occupation.

**Source:** Laws 2016, LB1110, § 3.  
Effective date April 14, 2016.

**48-3304 Commissioner of Labor; performance report; duties.**

On or before November 30 of each year, the Commissioner of Labor shall submit a copy of the performance report required by section 116(d) of the federal Workforce Innovation and Opportunity Act, 29 U.S.C. 3141(d), to the Governor, the Legislature, and the Nebraska Workforce Development Board. The report shall cover the prior program year and shall include the total amount of federal funding provided to the state and to each of the local workforce development areas for the adult, youth, and dislocated worker programs and the amount expended within each program for training services. The report to the Legislature shall be submitted electronically.

**Source:** Laws 2016, LB1110, § 4.  
Effective date April 14, 2016.

**48-3305 Department of Labor; powers; rules and regulations.**

(1) The Department of Labor shall have the authority to administer the requirements of Title I of the federal Workforce Innovation and Opportunity Act, including, but not limited to, establishing accounting, monitoring, auditing, and reporting procedures and criteria in order to ensure state compliance with the objectives and requirements of Title I of the federal Workforce Innovation and Opportunity Act.

(2) The department may adopt and promulgate any rules and regulations necessary to implement the Nebraska Workforce Innovation and Opportunity Act.

**Source:** Laws 2016, LB1110, § 5.  
Effective date April 14, 2016.

**ARTICLE 34**

**SECTOR PARTNERSHIP PROGRAM ACT**

Section

- 48-3401. Act, how cited.
- 48-3402. Legislative findings, declarations, and intent.
- 48-3403. Terms, defined.
- 48-3404. Sector Partnership Program; created; Department of Labor; duties; Department of Economic Development; contracts authorized; completed studies; public information.
- 48-3405. Sector Partnership Program Fund; created; use; investment.
- 48-3406. Report.
- 48-3407. Rules and regulations.

**48-3401 Act, how cited.**

Sections 48-3401 to 48-3407 shall be known and may be cited as the Sector Partnership Program Act.

**Source:** Laws 2016, LB1110, § 6.  
Effective date April 14, 2016.

**48-3402 Legislative findings, declarations, and intent.**



(1) The Legislature finds and declares that sector partnerships are a proven strategy for engaging employers in key industries, helping workers train for and access good jobs, and coordinating education, training, and workforce development activities in response to industry needs.

(2) It is the intent of the Legislature and the purpose of the Sector Partnership Program Act to support local sector partnerships that will close skill gaps in high-demand sectors of business and industry. By conducting labor availability and skills gap studies, the Sector Partnership Program will connect education and training providers with employers and will ensure that the state's workforce and economic development activities align with the needs of employers in the state's key industries.

**Source:** Laws 2016, LB1110, § 7.  
Effective date April 14, 2016.

#### **48-3403 Terms, defined.**

For purposes of the Sector Partnership Program Act:

(1) Department means the Department of Labor;

(2) Local area means a workforce development area authorized by the federal Workforce Innovation and Opportunity Act and established in Nebraska;

(3) Local sector partnership or partnership means a workforce collaborative that organizes key stakeholders in a particular sector of business or industry in a local area into a working group that focuses on the shared goals and human resources needs of such sector;

(4) Local workforce development board means a local workforce development board authorized by the federal Workforce Innovation and Opportunity Act and established in Nebraska; and

(5) Nebraska Workforce Development Board means the state workforce development board authorized by the federal Workforce Innovation and Opportunity Act and established in Nebraska.

**Source:** Laws 2016, LB1110, § 8.  
Effective date April 14, 2016.

#### **48-3404 Sector Partnership Program; created; Department of Labor; duties; Department of Economic Development; contracts authorized; completed studies; public information.**

(1) The Sector Partnership Program is created. The program shall be administered by the Department of Labor in conjunction with the Department of Economic Development. In establishing and administering the program, the Department of Labor shall consult with the Nebraska Workforce Development Board, the Department of Economic Development, and the State Department of Education.

(2) The Department of Labor, in conjunction with the Department of Economic Development, shall:

(a) Establish a study process to conduct labor availability and skills gap studies;

(b) Determine the laborshed areas of the state; and

(c) Complete labor availability and skills gap studies for all laborshed areas of the state on a rotating basis as determined by the Department of Labor.

(3) The Department of Labor and the Department of Economic Development may contract with other entities to conduct additional labor availability, skills gap, and sector partnership studies.

(4) The Department of Labor, in conjunction with the Department of Economic Development, shall provide technical assistance to local sector partnerships and persons interested in forming partnerships. Technical assistance may include providing: (a) Direction and counseling on forming and sustaining partnerships; (b) professional development and capacity building through academies, toolkits, and peer sharing networks; (c) customized labor market and economic analysis; and (d) information on career pathways, worker training resources, skill standards, and industry-based certifications.

(5) Except to the extent otherwise provided in state or federal law, all completed labor availability and skills gap studies shall be public information.

**Source:** Laws 2016, LB1110, § 9.

Effective date April 14, 2016.

#### **48-3405 Sector Partnership Program Fund; created; use; investment.**

(1) The Sector Partnership Program Fund is created. The fund shall be administered by the Department of Labor. The fund shall be used to pursue sector partnership activities, including, but not limited to, labor availability and skills gap studies by the Department of Labor and the Department of Economic Development pursuant to the Sector Partnership Program Act. The fund may also be used for administrative costs of the Department of Labor and the Department of Economic Development associated with sector partnership activities.

(2) The fund shall consist of such money as is: (a) Transferred to the fund from the Job Training Cash Fund and the Nebraska Training and Support Cash Fund; (b) otherwise appropriated to the fund by the Legislature; (c) donated as gifts, bequests, or other contributions to the fund from public or private entities; and (d) made available by any department or agency of the United States if so directed by such department or agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2016, LB1110, § 10.

Effective date April 14, 2016.

#### **Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **48-3406 Report.**

On or before July 31 of each year, the department shall provide an annual report to the Governor and the Business and Labor Committee of the Legislature. The report submitted to the Legislature shall be submitted electronically. The report shall detail the process and results of the labor availability and skills gap studies.

**Source:** Laws 2016, LB1110, § 11.

Effective date April 14, 2016.

**48-3407 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out the Sector Partnership Program Act.

**Source:** Laws 2016, LB1110, § 12.

Effective date April 14, 2016.

**ARTICLE 35****WORKPLACE PRIVACY ACT**

## Section

- 48-3501. Act, how cited.
- 48-3502. Terms, defined.
- 48-3503. Employer; prohibited acts.
- 48-3504. Waiver of right or protection under act prohibited.
- 48-3505. Retaliation or discrimination.
- 48-3506. Employee acts prohibited.
- 48-3507. Employer's rights not limited by act.
- 48-3508. Law enforcement agency rights.
- 48-3509. Personal Internet account; employer; duty; liability.
- 48-3510. Employer; limit on liability and use of certain information.
- 48-3511. Civil action authorized.

**48-3501 Act, how cited.**

Sections 48-3501 to 48-3511 shall be known and may be cited as the Workplace Privacy Act.

**Source:** Laws 2016, LB821, § 1.

Effective date July 21, 2016.

**48-3502 Terms, defined.**

For purposes of the Workplace Privacy Act:

(1) Adverse action means the discharge of an employee, a threat against an employee, or any other act against an employee that negatively affects the employee's employment;

(2) Applicant means a prospective employee applying for employment;

(3) Electronic communication device means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device;

(4) Employee means an individual employed by an employer;

(5) Employer means a public or nonpublic entity or an individual engaged in a business, an industry, a profession, a trade, or other enterprise in the state, including any agent, representative, or designee acting directly or indirectly in the interest of such an employer; and

(6)(a) Personal Internet account means an individual's online account that requires login information in order to access or control the account.

(b) Personal Internet account does not include:

(i) An online account that an employer or educational institution supplies or pays for, except when the employer or educational institution pays only for additional features or enhancements to the online account; or

(ii) An online account that is used exclusively for a business purpose of the employer.

**Source:** Laws 2016, LB821, § 2.  
Effective date July 21, 2016.

**48-3503 Employer; prohibited acts.**

No employer shall:

(1) Require or request that an employee or applicant provide or disclose any user name or password or any other related account information in order to gain access to the employee's or applicant's personal Internet account by way of an electronic communication device;

(2) Require or request that an employee or applicant log into a personal Internet account by way of an electronic communication device in the presence of the employer in a manner that enables the employer to observe the contents of the employee's or applicant's personal Internet account or provides the employer access to the employee's or applicant's personal Internet account;

(3) Require an employee or applicant to add anyone, including the employer, to the list of contacts associated with the employee's or applicant's personal Internet account or require or otherwise coerce an employee or applicant to change the settings on the employee's or applicant's personal Internet account which affects the ability of others to view the content of such account; or

(4) Take adverse action against, fail to hire, or otherwise penalize an employee or applicant for failure to provide or disclose any of the information or to take any of the actions specified in subdivisions (1) through (3) of this section.

**Source:** Laws 2016, LB821, § 3.  
Effective date July 21, 2016.

**48-3504 Waiver of right or protection under act prohibited.**

An employer shall not require an employee or applicant to waive or limit any protection granted under the Workplace Privacy Act as a condition of continued employment or of applying for or receiving an offer of employment. Any agreement to waive any right or protection under the act is against the public policy of this state and is void and unenforceable.

**Source:** Laws 2016, LB821, § 4.  
Effective date July 21, 2016.

**48-3505 Retaliation or discrimination.**

An employer shall not retaliate or discriminate against an employee or applicant because the employee or applicant:

(1) Files a complaint under the Workplace Privacy Act; or

(2) Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the act.

**Source:** Laws 2016, LB821, § 5.  
Effective date July 21, 2016.

**48-3506 Employee acts prohibited.**

An employee shall not download or transfer an employer's private proprietary information or private financial data to a personal Internet account without authorization from the employer. This section shall not apply if the proprietary information or the financial data is otherwise disclosed by the employer to the public pursuant to other provisions of law or practice.

**Source:** Laws 2016, LB821, § 6.  
Effective date July 21, 2016.

**48-3507 Employer's rights not limited by act.**

Nothing in the Workplace Privacy Act limits an employer's right to:

(1) Promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use and personal Internet account use;

(2) Request or require an employee or applicant to disclose access information to the employer to gain access to or operate:

(a) An electronic communication device supplied by or paid for in whole or in part by the employer; or

(b) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

(3) Restrict or prohibit an employee's access to certain web sites while using an electronic communication device supplied by or paid for in whole or in part by the employer or while using an employer's network or resources, to the extent permissible under applicable laws;

(4) Monitor, review, access, or block electronic data stored on an electronic communication device supplied by or paid for in whole or in part by the employer or stored on an employer's network, to the extent permissible under applicable laws;

(5) Access information about an employee or applicant that is in the public domain or is otherwise obtained in compliance with the Workplace Privacy Act;

(6) Conduct an investigation or require an employee to cooperate in an investigation under any of the following circumstances:

(a) If the employer has specific information about potentially wrongful activity taking place on the employee's personal Internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or

(b) If the employer has specific information about an unauthorized download or transfer of the employer's private proprietary information, private financial data, or other confidential information to an employee's personal Internet account;

(7) Take adverse action against an employee for downloading or transferring an employer's private proprietary information or private financial data to a personal Internet account without the employer's authorization;

(8) Comply with requirements to screen employees or applicants before hiring or to monitor or retain employee communications that are established by state or federal law or by a self-regulatory organization as defined in 15 U.S.C. 78c(a)(26), as such section existed on January 1, 2016; or

(9) Comply with a law enforcement investigation conducted by a law enforcement agency.

**Source:** Laws 2016, LB821, § 7.  
Effective date July 21, 2016.

**48-3508 Law enforcement agency rights.**

Nothing in the Workplace Privacy Act limits a law enforcement agency's right to screen employees or applicants in connection with a law enforcement employment application or a law enforcement officer conduct investigation.

**Source:** Laws 2016, LB821, § 8.  
Effective date July 21, 2016.

**48-3509 Personal Internet account; employer; duty; liability.**

(1) The Workplace Privacy Act does not create a duty for an employer to search or monitor the activity of a personal Internet account.

(2) An employer is not liable under the act for failure to request or require that an employee or applicant grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal Internet account.

**Source:** Laws 2016, LB821, § 9.  
Effective date July 21, 2016.

**48-3510 Employer; limit on liability and use of certain information.**

If an employer inadvertently learns the user name, password, or other means of access to an employee's or applicant's personal Internet account through the use of otherwise lawful technology that monitors the employer's computer network or employer-provided electronic communication devices for service quality or security purposes, the employer is not liable for obtaining the information, but the employer shall not use the information to access the employee's or applicant's personal Internet account or share the information with anyone. The employer shall delete such information as soon as practicable.

**Source:** Laws 2016, LB821, § 10.  
Effective date July 21, 2016.

**48-3511 Civil action authorized.**

Upon violation of the Workplace Privacy Act, an aggrieved employee or applicant may, in addition to any other available remedy, institute a civil action within one year after the date of the alleged violation or the discovery of the alleged violation, whichever is later. The employee or applicant shall file an action directly in the district court of the county where such alleged violation occurred. The district court shall docket and try such case as any other civil action, and any successful complainant shall be entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorney's fees, and costs.

**Source:** Laws 2016, LB821, § 11.  
Effective date July 21, 2016.



## CHAPTER 49

### LAW

Article.

5. Publication and Distribution of Session Laws and Journals. 49-501.01.
6. Printing and Distribution of Statutes. 49-617.
7. Statute Revision. 49-707 to 49-770.
8. Definitions, Construction, and Citation. 49-801.01.
9. Commission on Uniform State Laws. 49-904.
14. Nebraska Political Accountability and Disclosure Act.
  - (a) General Provisions. 49-1413 to 49-1433.01.
  - (b) Campaign Practices. 49-1445 to 49-1479.02.
  - (c) Lobbying Practices. 49-1483 to 49-1492.01.
  - (d) Conflicts of Interest. 49-1493 to 49-14,102.
  - (e) Nebraska Accountability and Disclosure Commission. 49-14,120 to 49-14,140.
  - (f) Digital and Electronic Filing. 49-14,141.
15. Nebraska Short Form Act. Repealed.
17. Constitution of Nebraska. 49-1701.

#### ARTICLE 5

#### PUBLICATION AND DISTRIBUTION OF SESSION LAWS AND JOURNALS

Section

49-501.01. Session laws and journal; Clerk of the Legislature; compile; contents.

**49-501.01 Session laws and journal; Clerk of the Legislature; compile; contents.**

The session laws and journal of the Legislature shall be compiled and published by the Clerk of the Legislature after each regular session of the Legislature. The session laws and journal may be published in print or electronic format or in both formats. The session laws shall contain all the laws passed by the preceding session as well as those passed during any special session since the last regular session. The session laws shall also contain a certified copy of the Constitution of Nebraska as required by section 49-1701. The clerk shall distribute one copy of the session laws and journal to each person who was a member of the Legislature by which the laws were enacted and shall distribute a second copy to any such person upon his or her request. The clerk shall provide the session laws and journals to the Secretary of State for distribution pursuant to sections 49-501 to 49-509.01.

**Source:** Laws 1971, LB 36, § 1; Laws 2000, LB 534, § 1; Laws 2010, LB770, § 1; Laws 2016, LB686, § 2.  
Effective date July 21, 2016.

#### ARTICLE 6

#### PRINTING AND DISTRIBUTION OF STATUTES

Section

49-617. Printing of statutes; distribution of copies.

**49-617 Printing of statutes; distribution of copies.**

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; three copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, the Auditor of Public Accounts, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Nebraska Public Employees Retirement Systems, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update

previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

**Source:** Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 325, § 1, p. 863; Laws 1967, c. 326, § 1, p. 865; Laws 1971, LB 36, § 4; Laws 1972, LB 1032, § 254; Laws 1972, LB 1174, § 1; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 563, § 4; Laws 1973, LB 572, § 1; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8; Laws 2010, LB770, § 3; Laws 2011, LB384, § 1.

## ARTICLE 7

### STATUTE REVISION

#### Section

- 49-707. Copyright; distribution; price; disposition of proceeds; receipts.  
 49-708. Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund; created; use; investment.  
 49-770. Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.

#### **49-707 Copyright; distribution; price; disposition of proceeds; receipts.**

The Revisor of Statutes shall cause the supplements and reissued volumes to be copyrighted under the copyright laws of the United States for the benefit of the people of Nebraska.

The supplements and reissued or replacement volumes shall be sold and distributed by the Supreme Court at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall be sufficient to recover all costs of publication and distribution.

The Supreme Court may sell for one dollar per volume any compilation or revision of the statutes of Nebraska that has been superseded by a later official revision, compilation, or replacement volume. The Supreme Court may dispose of any unsold superseded volumes in any manner it deems proper.

All money received by the Supreme Court from the sale of the supplements and reissued or replacement volumes shall be paid into the state treasury to the credit of the Nebraska Statutes Cash Fund or the Nebraska Statutes Distribution Cash Fund, as appropriate. That portion of the money received that

represents the costs of publication shall be credited to the Nebraska Statutes Cash Fund, and that portion of the money received that represents the costs of distribution shall be credited to the Nebraska Statutes Distribution Cash Fund. The court shall take receipts for all such money paid into the funds.

Supplements and reissued volumes shall be furnished and delivered free of charge in the same number and to the same parties as are designated in section 49-617.

**Source:** Laws 1945, c. 119, § 7, p. 394; Laws 1965, c. 306, § 5, p. 862; Laws 1965, c. 305, § 2, p. 860; Laws 1977, LB 8, § 3; Laws 1980, LB 598, § 3; Laws 1986, LB 991, § 1; Laws 1987, LB 572, § 7; Laws 2012, LB576, § 1.

**49-708 Nebraska Statutes Cash Fund; Nebraska Statutes Distribution Cash Fund; created; use; investment.**

The Nebraska Statutes Cash Fund is created. The fund shall consist of funds received pursuant to section 49-707. The fund shall be used by the Revisor of Statutes to perform the duties required by subdivision (4) of section 49-702 and section 49-704, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Statutes 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 Nebraska Statutes Distribution Cash Fund is created. The fund shall consist of funds received pursuant to section 49-707. The fund shall be used by the Supreme Court to perform the duties required by such section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2012, LB576, § 2.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**49-770 Section of statutes; not correlated; not reconcilable; Revisor of Statutes; duties.**

When one section of the statutes is amended in two or more bills in the same session of the Legislature and has not been correlated as a part of the normal legislative process and the amendments are not entirely reconcilable and are in conflict with each other, it shall be the duty of the Revisor of Statutes to cause only the latest version to pass the Legislature to be published in the statutory supplement followed by a brief note explaining the action taken. The Revisor of Statutes shall report electronically each such case to the chairperson of the appropriate standing committee at or prior to the convening of the next regular session of the Legislature for whatever action may be appropriate.

**Source:** Laws 1979, LB 70, § 2; Laws 2012, LB782, § 68.

## ARTICLE 8

## DEFINITIONS, CONSTRUCTION, AND CITATION

Section

49-801.01. Internal Revenue Code; reference.

**49-801.01 Internal Revenue Code; reference.**

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902, 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on February 27, 2015.

**Source:** Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2; Laws 2011, LB134, § 1; Laws 2011, LB389, § 11; Laws 2012, LB725, § 1; Laws 2012, LB1128, § 20; Laws 2013, LB24, § 1; Laws 2014, LB191, § 13; Laws 2014, LB739, § 1; Laws 2015, LB171, § 1.

## ARTICLE 9

## COMMISSION ON UNIFORM STATE LAWS

Section

49-904. Members; duties.

**49-904 Members; duties.**

Each commissioner shall attend the meeting of the National Conference of Commissioners on Uniform State Laws, and both in and out of such national conference shall do all in his or her power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable. The commission shall report electronically to the Clerk of the Legislature from time to time as the commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the commission. It shall also be the duty of the commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

**Source:** Laws 1951, c. 166, § 4, p. 650; Laws 1979, LB 322, § 20; Laws 1981, LB 545, § 12; Laws 2012, LB782, § 69.

**LAW**

**ARTICLE 14**

**NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT**

**(a) GENERAL PROVISIONS**

Section

- 49-1413. Committee, defined.  
49-1415. Contribution, defined.  
49-1433.01. Major out-of-state contributor, defined.
- (b) CAMPAIGN PRACTICES**
- 49-1445. Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.  
49-1446. Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.  
49-1446.04. Candidate committee; loans; restrictions; civil penalty.  
49-1447. Committee treasurer; statements or reports; duties; committee records; violation; penalty.  
49-1455. Committee campaign statement; contents.  
49-1456. Committee account; income; how treated; loans.  
49-1457. Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.  
49-1459. Campaign statements; filing schedule; statement of exemption.  
49-1461.01. Ballot question committee; surety bond; requirements; violations; penalty.  
49-1463. Campaign statement; statement of exemption; violations; late filing fee.  
49-1463.01. Late filing fee; relief; reduction or waiver; when.  
49-1464. Campaign statements of committees; where filed.  
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49-1469. Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.  
49-1469.05. Businesses and organizations; separate segregated political fund; restrictions.  
49-1469.06. Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.  
49-1469.07. Businesses and organizations; separate segregated political fund; status.  
49-1469.08. Businesses and organizations; late filing fee; violation; penalty.  
49-1477. Contributions from persons other than committee; information required; violation; penalty.  
49-1479.02. Major out-of-state contributor; report; contents; applicability; late filing fee.

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## Section

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## (a) GENERAL PROVISIONS

**49-1413 Committee, defined.**

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of more than five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or (b) a person whose primary purpose is to receive contributions or make expenditures and who receives or makes contributions or expenditures of more than five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

(2) Except as otherwise provided in section 49-1445, a committee shall be considered formed and subject to the Nebraska Political Accountability and Disclosure Act upon raising, receiving, or spending more than five thousand dollars in a calendar year as prescribed in this section.

(3) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership is not a committee if it makes expenditures or provides personal services pursuant to sections 49-1469 to 49-1469.08.

**Source:** Laws 1976, LB 987, § 13; Laws 1980, LB 535, § 3; Laws 1983, LB 230, § 1; Laws 1987, LB 480, § 2; Laws 1999, LB 416, § 2; Laws 2005, LB 242, § 4; Laws 2013, LB79, § 2; Laws 2014, LB946, § 21.

**49-1415 Contribution, defined.**

(1) Contribution shall mean a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value

to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

(2) Contribution shall include the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fundraising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; and the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.

(3) Contribution shall not include:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than two hundred fifty dollars in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid;

(b) Amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution; or

(c) Food and beverages, in the amount of not more than fifty dollars in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

**Source:** Laws 1976, LB 987, § 15; Laws 2013, LB79, § 3; Laws 2014, LB946, § 22.

#### **49-1433.01 Major out-of-state contributor, defined.**

Major out-of-state contributor means a corporation, union, industry association, trade association, or professional association which is not organized under the laws of the State of Nebraska and which makes contributions or expenditures totaling more than ten thousand dollars in any calendar year in connection with one or more elections.

**Source:** Laws 1997, LB 49, § 6; Laws 2013, LB79, § 4; Laws 2014, LB946, § 23.

### (b) CAMPAIGN PRACTICES

#### **49-1445 Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.**

(1) A candidate shall form a candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year.

(2) A candidate committee may consist of one member with the candidate being the member.

(3) A person who is a candidate for more than one office shall form a candidate committee for an office upon raising, receiving, or expending more than five thousand dollars in a calendar year for that office.

(4) Two or more candidates who campaign as a slate or team for public office shall form a committee upon raising, receiving, or expending jointly in any combination more than five thousand dollars in a calendar year.

(5) The fee to file for office shall not be included in determining if a candidate has raised, received, or expended more than five thousand dollars in a calendar year.

(6) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 45; Laws 1980, LB 535, § 5; Laws 1983, LB 230, § 2; Laws 1987, LB 480, § 3; Laws 1990, LB 601, § 1; Laws 1999, LB 416, § 3; Laws 2005, LB 242, § 7; Laws 2013, LB79, § 5; Laws 2014, LB946, § 24.

**49-1446 Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.**

(1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469.06, including independent expenditures made in such elections.

(8) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 46; Laws 1977, LB 41, § 40; Laws 1980, LB 535, § 6; Laws 1988, LB 1136, § 1; Laws 1993, LB 587, § 12; Laws 2005, LB 242, § 8; Laws 2013, LB79, § 6.

**49-1446.04 Candidate committee; loans; restrictions; civil penalty.**

(1) A candidate committee shall not accept more than fifteen thousand dollars in loans prior to or during the first thirty days after formation of the candidate committee.

(2) After the thirty-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee shall not accept loans in an aggregate amount of more than fifty percent of the contributions of money, other than the proceeds of loans, which the candidate committee has received during such period as of the date of the receipt of the proceeds of the loan. Any loans which have been repaid as of such date shall not be taken into account for purposes of the aggregate loan limit.

(3) A candidate committee shall not pay interest, fees, gratuities, or other sums in consideration of a loan, advance, or other extension of credit to the candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

(4) The penalty for violation of this section shall be a civil penalty of not less than two hundred fifty dollars and not more than the amount of money received by a candidate committee in violation of this section if the candidate committee received more than two hundred fifty dollars. The commission shall assess and collect the civil penalty and shall remit the penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1995, LB 399, § 2; Laws 2005, LB 242, § 12; Laws 2006, LB 188, § 13; Laws 2013, LB79, § 7.

**49-1447 Committee treasurer; statements or reports; duties; committee records; violation; penalty.**

(1) The committee treasurer shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in a statement or report filed pursuant to sections 49-1445 to 49-1479.02 or rules and regulations adopted and promulgated under the Nebraska Political Accountability and Disclosure Act.

(2)(a) For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee required to be filed under the act and shall be personally liable subject to section 49-1461.01 for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings.

(b) For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed by his or her candidate committee under the Nebraska Political Accountability and Disclosure Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

(3) The committee treasurer shall record the name and address of each person from whom a contribution is received except for contributions of fifty dollars or less received pursuant to subsection (2) of section 49-1472.

(4) The records of a committee shall be preserved for five years and shall be made available for inspection as authorized by the commission.

(5) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 47; Laws 1977, LB 41, § 41; Laws 2000, LB 438, § 2; Laws 2005, LB 242, § 13; Laws 2013, LB79, § 8.

**49-1455 Committee campaign statement; contents.**

(1) The campaign statement of a committee, other than a political party committee, shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(d) The full name of each individual from whom contributions totaling more than two hundred fifty dollars are received during the period covered by the report, together with the individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that individual for the election period;

(e) The full name of each person, except those individuals reported under subdivision (1)(d) of this section, which contributed a total of more than two hundred fifty dollars during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(f) The name of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(g) Except as otherwise provided in subsection (3) of this section: The full name and street address of each person to whom expenditures totaling more than two hundred fifty dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(h) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(i) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

(2) For purposes of this section, election period means the calendar year of the election.

(3) A campaign statement shall include the total amount paid to individual petition circulators during the reporting period, if any, but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

**Source:** Laws 1976, LB 987, § 55; Laws 1988, LB 1136, § 3; Laws 1993, LB 587, § 13; Laws 1997, LB 420, § 18; Laws 1999, LB 416, § 7; Laws 2008, LB39, § 6; Laws 2013, LB79, § 9; Laws 2014, LB946, § 25.

#### **49-1456 Committee account; income; how treated; loans.**

(1) Any income received by a committee on an account consisting of funds or property belonging to the committee shall not be considered a contribution to the committee but shall be reported as income. Any interest paid by a committee shall be reported as an expenditure.

(2) A loan made or received shall be set forth in a separate schedule providing the date and amount of the loan and, if the loan is repaid, the date and manner of repayment. The committee shall provide the name and address of the lender and any person who is liable directly, indirectly, or contingently on each loan of more than two hundred fifty dollars.

**Source:** Laws 1976, LB 987, § 56; Laws 1981, LB 134, § 3; Laws 1999, LB 416, § 8; Laws 2013, LB79, § 10; Laws 2014, LB946, § 26.

#### **49-1457 Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.**

(1) The campaign statement filed by a political party committee shall contain the following information:

(a) The full name and street address of each person from whom contributions totaling more than two hundred fifty dollars in value are received in a calendar year, the amount, and the date or dates contributed; and if the person is a committee, the name and address of the committee and the full name and street address of the committee treasurer, together with the amount of the contribution and the date received;

(b) An itemized list of all expenditures, including in-kind contributions and expenditures and loans, made during the period covered by the campaign statement which were contributions to a candidate committee of a candidate for elective office or a ballot question committee; or independent expenditures in support of the qualification, passage, or defeat of a ballot question, or in



support of the nomination or election of a candidate for elective office or the defeat of any of the candidate's opponents;

(c) The total expenditure by the committee for each candidate for elective office or ballot question in whose behalf an independent expenditure was made or a contribution was given for the election; and

(d) The filer's name, address, and telephone number, if any, and the full name, residential and business addresses, and telephone numbers of the committee treasurer.

(2) A contribution to a candidate or ballot question committee listed under subdivision (1)(b) of this section shall note the name and address of the committee, the name of the candidate and the office sought, if any, the amount contributed, and the date of the contribution.

(3) An independent expenditure listed under subdivision (1)(b) of this section shall note the name of the candidate for whose benefit the expenditure was made and the office sought by the candidate, or a brief description of the ballot question for which the expenditure was made, the amount, date, and purpose of the expenditure, and the full name and address of the person to whom the expenditure was made.

(4) An expenditure listed which was made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.

**Source:** Laws 1976, LB 987, § 57; Laws 1999, LB 416, § 9; Laws 2013, LB79, § 11; Laws 2014, LB946, § 27.

**49-1459 Campaign statements; filing schedule; statement of exemption.**

(1) Except as provided in subsection (2) of this section, campaign statements as required by the Nebraska Political Accountability and Disclosure Act shall be filed according to the following schedule:

(a) A first preelection campaign statement shall be filed not later than the thirtieth day before the election. The closing date for a campaign statement filed under this subdivision shall be the thirty-fifth day before the election;

(b) A second preelection campaign statement shall be filed not later than the tenth day before the election. The closing date for a campaign statement filed under this subdivision shall be the fifteenth day before the election; and

(c) A postelection campaign statement shall be filed not later than the fortieth day following the primary election and the seventieth day following the general election. The closing date for a postelection campaign statement to be filed under this subdivision after the primary election shall be the thirty-fifth day following the election. The closing date for a postelection campaign statement to be filed under this subdivision after the general election shall be December 31 of the year in which the election is held. If all liabilities of a candidate and committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the dates provided under this subdivision.

(2) Any committee may file a statement with the commission indicating that the committee does not expect to receive contributions or make expenditures of more than one thousand dollars in the calendar year of an election. Such statement shall be signed by the committee treasurer or the assistant treasurer, and in the case of a candidate committee, it shall also be signed by the

candidate. Such statement shall be filed on or before the thirtieth day before the election. A committee which files a statement pursuant to this subsection is not required to file campaign statements according to the schedule prescribed in subsection (1) of this section but shall file a sworn statement of exemption not later than the fortieth day following the primary election and the seventieth day following the general election stating only that the committee did not, in fact, receive or expend an amount in excess of one thousand dollars. If the committee receives contributions or makes expenditures of more than one thousand dollars during the election year, the committee is then subject to all campaign filing requirements under subsection (1) of this section.

**Source:** Laws 1976, LB 987, § 59; Laws 1980, LB 535, § 10; Laws 1993, LB 587, § 14; Laws 1998, LB 632, § 3; Laws 1999, LB 416, § 11; Laws 2013, LB79, § 12.

**49-1461.01 Ballot question committee; surety bond; requirements; violations; penalty.**

(1) A ballot question committee shall file with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

(2) A bond in the amount of five thousand dollars shall be filed with the commission within thirty days after the committee receives contributions or makes expenditures of more than one hundred thousand dollars in a calendar year, and the amount of the bond shall be increased by five thousand dollars for each additional five hundred thousand dollars received or expended in a calendar year.

(3) Proof of any required increase in the amount of the bond shall be filed with the commission within thirty days after each additional five hundred thousand dollars is received or expended. Any failure to pay late filing fees, civil penalties, or interest due under the act shall be recovered from the proceeds of the bond prior to recovery from the treasurer of the committee.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 2000, LB 438, § 3; Laws 2005, LB 242, § 16; Laws 2013, LB79, § 13; Laws 2014, LB946, § 28.

**49-1463 Campaign statement; statement of exemption; violations; late filing fee.**

(1) Any person who fails to file a campaign statement with the commission under sections 49-1459 to 49-1463 shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(2) Any committee which fails to file a statement of exemption with the commission under subsection (2) of section 49-1459 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement of

exemption remains not filed in violation of this section, not to exceed two hundred twenty-five dollars.

**Source:** Laws 1976, LB 987, § 63; Laws 1980, LB 535, § 13; Laws 1998, LB 632, § 4; Laws 1999, LB 416, § 12; Laws 2006, LB 188, § 14; Laws 2013, LB79, § 14.

**49-1463.01 Late filing fee; relief; reduction or waiver; when.**

(1) A person required to pay a late filing fee imposed under section 49-1449, 49-1458, 49-1463, 49-1467, 49-1469.08, 49-1478.01, or 49-1479.01 may apply to the commission for relief. The commission by order may reduce the amount of a late filing fee imposed and waive any or all of the interest due on the fee upon a showing by such person that (a) the circumstances indicate no intent to file late, (b) the person has not been required to pay late filing fees for two years prior to the time the filing was due, (c) the late filing shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fees and waiver of interest would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(2) A person required to pay a late filing fee imposed for failure to file a statement of exemption under subsection (2) of section 49-1459 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and waive any or all of the interest due on the fee, and the person shall not be required to make a showing as provided by subsection (1) of this section.

**Source:** Laws 1987, LB 480, § 7; Laws 1996, LB 1263, § 2; Laws 1997, LB 420, § 19; Laws 1998, LB 632, § 5; Laws 2000, LB 438, § 7; Laws 2001, LB 242, § 4; Laws 2005, LB 242, § 17; Laws 2006, LB 188, § 15; Laws 2013, LB79, § 15; Laws 2014, LB946, § 29.

**49-1464 Campaign statements of committees; where filed.**

The campaign statement of any committee, including a candidate committee, a ballot question committee, or a political party committee, shall be filed with the commission.

**Source:** Laws 1976, LB 987, § 64; Laws 1980, LB 535, § 14; Laws 1993, LB 587, § 16; Laws 2001, LB 242, § 5; Laws 2013, LB79, § 16.

**49-1467 Person; independent expenditure report; when filed; contents; late filing fee; violation; penalty.**

(1) Any person, other than a committee, who makes an independent expenditure advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which is in an amount of more than two hundred fifty dollars, shall file a report of the independent expenditure, within ten days, with the commission.

(2) The report shall be made on an independent expenditure report form provided by the commission and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount of the expenditure, the name and address of the person to whom it was paid, the name and address of the person filing the report, and the name, address, occupation, employer, and principal place of business of each person who contributed more than two hundred fifty dollars to the expenditure.

(3) Any person who fails to file a report of an independent expenditure with the commission shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars.

(4) Any person who violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1976, LB 987, § 67; Laws 1977, LB 41, § 42; Laws 1996, LB 1263, § 3; Laws 1999, LB 416, § 13; Laws 2001, LB 242, § 6; Laws 2005, LB 242, § 18; Laws 2013, LB79, § 17; Laws 2014, LB946, § 30.

**49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.**

(1) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, which is organized under the laws of the State of Nebraska or doing business in this state and which is not a committee, may:

- (a) Make an expenditure;
- (b) Make a contribution; and
- (c) Provide personal services.

(2) Any such entity shall not be required to file reports of independent expenditures pursuant to section 49-1467, but if it makes a contribution or expenditure, or provides personal services, with a value of more than two hundred fifty dollars, it shall file a report with the commission within ten days after the end of the calendar month in which the contribution or expenditure is made or the personal services are provided. The report shall include:

(a) The nature, date, and value of the contribution or expenditure and the name of the candidate or committee or a description of the ballot question to or for which the contribution or expenditure was made; and

(b) A description of any personal services provided, the date the services were provided, and the name of the candidate or committee or a description of the ballot question to or for which the personal services were provided.

(3) Any entity specified in subsection (1) of this section may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in sections 49-1469.05 and 49-1469.06.

**Source:** Laws 1976, LB 987, § 69; Laws 1977, LB 41, § 43; Laws 1980, LB 535, § 15; Laws 1983, LB 214, § 1; Laws 1988, LB 1136, § 4; Laws 1993, LB 587, § 17; Laws 1996, LB 1263, § 4; Laws 1999, LB 416, § 14; Laws 2005, LB 242, § 19; Laws 2013, LB79, § 18; Laws 2014, LB946, § 31.

**49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.**

(1) An entity specified in subsection (1) of section 49-1469 which establishes and administers a separate segregated political fund:

(a) Shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund; and

(b) Shall file the reports required by subsection (2) of section 49-1469 with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund.

(2) If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association, limited liability company, or limited liability partnership of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (2) of section 49-1469.

**Source:** Laws 2005, LB 242, § 20; Laws 2013, LB79, § 19.

**49-1469.06 Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.**

(1) All contributions to and expenditures from a separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stockholders, or members of the corporation, including a nonprofit corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, and the affiliates thereof, under which such fund was established.

(2) No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals.

(3) Only expenditures to candidates and committees and independent expenditures may be made from a fund established by an entity specified in subsection (1) of section 49-1469. Such separate segregated political fund may receive and disburse funds for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the entity which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made.

(4) The expenses for establishment and administration of a separate segregated political fund of any such entity may be paid from the separate segregated political fund of such entity.

**Source:** Laws 2005, LB 242, § 21; Laws 2013, LB79, § 20.

**49-1469.07 Businesses and organizations; separate segregated political fund; status.**

A separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to independent committees, and the entity which establishes and administers such fund shall make the reports and filings required therefor.

**Source:** Laws 2005, LB 242, § 22; Laws 2013, LB79, § 21.

**49-1469.08 Businesses and organizations; late filing fee; violation; penalty.**

(1) Any entity specified in subsection (1) of section 49-1469 which fails to file a report with the commission required by section 49-1469 or 49-1469.07 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of such sections, not to exceed seven hundred fifty dollars.

(2) Any person who knowingly violates this section, section 49-1469, 49-1469.05, 49-1469.06, or 49-1469.07 shall be guilty of a Class III misdemeanor.

**Source:** Laws 2005, LB 242, § 23; Laws 2013, LB79, § 22.

**49-1477 Contributions from persons other than committee; information required; violation; penalty.**

No person shall receive a contribution from a person other than a committee unless, for purposes of the recipient person's record-keeping and reporting requirements, the contribution is accompanied by the name and address of each person who contributed more than one hundred dollars to the contribution. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1976, LB 987, § 77; Laws 1977, LB 41, § 50; Laws 2013, LB79, § 23; Laws 2014, LB946, § 32.

**49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee.**

(1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for



each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

**Source:** Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3; Laws 2013, LB79, § 24; Laws 2014, LB946, § 33.

### (c) LOBBYING PRACTICES

#### **49-1483 Lobbyist and principal; file separate statements; when; contents.**

(1) Every lobbyist who is registered or required to be registered shall, for each of his or her principals, file electronically a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter. Every principal employing a lobbyist who is registered or required to be registered shall file electronically a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter.

(2) Each statement shall show the following:

(a) The total amount received or expended directly or indirectly for the purpose of carrying on lobbying activities, with the following categories of expenses each being separately itemized: (i) Miscellaneous expenses; (ii) entertainment, including expenses for food and drink as provided in subdivision (3)(a) of this section; (iii) lodging expenses; (iv) travel expenses; (v) lobbyist compensation, except that when a principal retains the services of a person who has only part-time lobbying duties, only the compensation paid which is reasonably attributable to influencing legislative action need be reported; (vi) lobbyist expense reimbursement; (vii) admissions to a state-owned facility or a state-sponsored industry or event as provided in subdivision (3)(a) of this section; and (viii) extraordinary office expenses directly related to the practice of lobbying;

(b) A detailed statement of any money which is loaned, promised, or paid by a lobbyist, a principal, or anyone acting on behalf of either to an official in the executive or legislative branch or member of such official's staff. The detailed statement shall identify the recipient and the amount and the terms of the loan, promise, or payment; and

(c) The total amount expended for gifts, other than admissions to a state-owned facility or a state-sponsored industry or event, as provided in subdivision (3)(a) of this section.

(3)(a) Each statement shall disclose the aggregate expenses for entertainment, admissions, and gifts for each of the following categories of elected officials: Members of the Legislature; and officials in the executive branch of the state. Such disclosures shall be in addition to the entertainment expenses reported under subdivision (2)(a)(ii) of this section, admissions reported under subdivision (2)(a)(vii) of this section, and gifts reported under subdivision (2)(c) of this section.

(b) For purposes of reporting aggregate expenses for entertainment for members of the Legislature and officials in the executive branch of the state as required by subdivision (3)(a) of this section, the reported amount shall include the actual amounts attributable to entertaining members of the Legislature and

officials in the executive branch of the state. When the nature of an event at which members of the Legislature are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of members of the Legislature in attendance. When the nature of an event at which officials in the executive branch of the state are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of officials in the executive branch of the state in attendance. For purposes of this subdivision, the average cost per person means the cost of the event divided by the number of persons expected to attend the event.

(4) The lobbyist shall also file any changes or corrections to the information set forth in the registration required pursuant to section 49-1480 so as to reflect the correctness of such information as of the end of each calendar quarter for which such statement is required by this section.

(5) If a lobbyist does not expect to receive lobbying receipts from or does not expect to make lobbying expenditures for a principal, the quarterly statements required by this section as to such principal need not be filed by the lobbyist if the principal and lobbyist both certify such facts electronically to the Clerk of the Legislature. A lobbyist exempt from filing quarterly statements pursuant to this section shall (a) file a statement of activity pursuant to section 49-1488 and (b) resume or commence filing quarterly statements with regard to such principal starting with the quarterly period the lobbyist receives lobbying receipts or makes lobbying expenditures for such principal.

(6) If a principal does not expect to receive lobbying receipts or does not expect to make lobbying expenditures, the quarterly statements required pursuant to this section need not be filed by the principal if the principal and lobbyist both certify such facts electronically to the Clerk of the Legislature. A principal exempt from filing quarterly statements pursuant to this section shall commence or resume filing quarterly statements starting with the quarterly period the principal receives lobbying receipts or makes lobbying expenditures.

(7) A principal shall report electronically the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.

(8) For purposes of sections 49-1480 to 49-1492.01, calendar quarter means the first day of January through the thirty-first day of March, the first day of April through the thirtieth day of June, the first day of July through the thirtieth day of September, and the first day of October through the thirty-first day of December.

**Source:** Laws 1976, LB 987, § 83; Laws 1979, LB 162, § 4; Laws 1983, LB 479, § 2; Laws 1991, LB 232, § 4; Laws 1994, LB 872, § 4; Laws 1994, LB 1243, § 5; Laws 2000, LB 1021, § 5; Laws 2001, LB 242, § 8; Laws 2005, LB 242, § 33; Laws 2012, LB782, § 70.

#### **49-1483.03 Lobbyist or principal; special report required; when; late filing fee.**

(1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall, within fifteen days after the end of such calendar month, file electronically a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special

report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

**Source:** Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4; Laws 2012, LB782, § 71.

**49-1488 Registered lobbyist; statement of activity during regular or special session; when filed.**

Within forty-five days after the completion of every regular or special session of the Legislature, each registered lobbyist shall submit electronically to the Clerk of the Legislature a statement listing the legislation upon which the lobbyist acted, including identification by number of any bill or resolution and the position taken by the lobbyist.

**Source:** Laws 1976, LB 987, § 88; Laws 1991, LB 232, § 5; Laws 1994, LB 872, § 10; Laws 1994, LB 1243, § 11; Laws 2012, LB782, § 72.

**49-1488.01 Statements; late filing fee; reduction or waiver; when.**

(1) Every lobbyist who fails to file a quarterly statement or a statement of activity with the Clerk of the Legislature, pursuant to sections 49-1483 and 49-1488, shall pay to the commission a late filing fee of twenty-five dollars for each day any of such statements are not filed in violation of such sections, but not to exceed seven hundred fifty dollars per statement.

(2) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section may apply to the commission for relief. The commission by order may reduce the amount of the late filing fee imposed upon such lobbyist if he or she shows the commission that (a) the circumstances indicate no intent to file late, (b) the lobbyist has not been required to pay a late filing fee for two years prior to the time the filing of the statement was due, (c) the late filing of the statement shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fee would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(3) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section who qualifies for an exemption to the filing of quarterly statements pursuant to subsection (5) of section 49-1483 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and the

person shall not be required to make a showing as provided by subsection (2) of this section.

**Source:** Laws 1991, LB 232, § 7; Laws 1994, LB 872, § 11; Laws 1994, LB 1243, § 12; Laws 1998, LB 632, § 6; Laws 1999, LB 416, § 18; Laws 2005, LB 242, § 35; Laws 2013, LB79, § 25; Laws 2014, LB946, § 34.

**49-1492.01 Agency, political subdivision, or publicly funded postsecondary educational institution; gifts; reporting requirements; violations; penalty.**

(1) Any agency, political subdivision, or publicly funded postsecondary educational institution which gives a gift of an admission to a state-owned facility or a state-sponsored industry or event to a public official, a member of a public official's staff, or a member of the immediate family of a public official shall report the gift on a form prescribed by the commission.

(2) The report shall be filed electronically with the Clerk of the Legislature within fifteen days after the end of the calendar quarter in which the gift is given. The report shall include the following:

(a) The identity of the agency, political subdivision, or publicly funded postsecondary educational institution;

(b) A description of the gift;

(c) The value of the gift; and

(d) The name of the recipient of the gift and the following:

(i) If the recipient is an official in the executive or legislative branch of state government, the office held by the official and the branch he or she serves;

(ii) If the recipient is a member of an official's staff in the executive or legislative branch of state government, his or her job title and the name of the official; or

(iii) If the recipient is a member of the immediate family of an official in the executive or legislative branch of state government, his or her relationship to the official and the name of the official.

(3) For purposes of this section, public official does not include an elected or appointed official of a political subdivision or school board.

(4) Any person who knowingly and intentionally violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 2000, LB 1021, § 7; Laws 2012, LB782, § 73.

(d) CONFLICTS OF INTEREST

**49-1493 Individuals required to file a statement of financial interests.**

The individuals listed in subdivisions (1) through (13) of this section shall file with the commission a statement of financial interests as provided in sections 49-1496 and 49-1497 for the preceding calendar year on or before March 1 of each year in which such individual holds such a position. An individual who leaves office shall, within thirty days after leaving office, file a statement covering the period since the previous statement was filed. Disclosure of the interest named in sections 49-1496 to 49-1498 shall be made by:

(1) An individual holding a state executive office as provided in Article IV of the Constitution of Nebraska, including the Governor, Lieutenant Governor,

Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, Tax Commissioner, and heads of such other executive departments as set forth in the Constitution or as may be established by law;

(2) An individual holding the office of Commissioner of Education, member of the State Board of Education, member of the Board of Regents of the University of Nebraska with the exception of student members, or member of the Coordinating Commission for Postsecondary Education;

(3) A member of the Board of Parole;

(4) A member of the Public Service Commission;

(5) A member of the Legislature;

(6) A member of the board of directors or an officer of a district organized under the provisions of Chapter 70;

(7) A member of any board or commission of the state or any county which examines or licenses a business or which determines rates for or otherwise regulates a business;

(8) A member of a land-use planning commission, zoning commission, or authority of the state or any county with a population of more than one hundred thousand inhabitants;

(9) An elected official of a city of the primary or metropolitan class;

(10) An elected county official;

(11) A member of the Nebraska Environmental Trust Board;

(12) An individual employed at the University of Nebraska-Lincoln in the position of Head Football Coach, Men's Basketball Coach, or Women's Basketball Coach; and

(13) An official or employee of the state designated by rules and regulations of the commission who is responsible for taking or recommending official action of a nonministerial nature with regard to:

(a) Contracting or procurement;

(b) Administering or monitoring grants or subsidies;

(c) Land-use planning or zoning;

(d) Inspecting, licensing, regulating, or auditing any person; or

(e) Any similar action.

**Source:** Laws 1976, LB 987, § 93; Laws 1983, LB 214, § 2; Laws 1991, LB 663, § 35; Laws 1999, LB 417, § 1; Laws 2001, LB 242, § 9; Laws 2002, LB 1003, § 35; Laws 2016, LB400, § 1.  
Effective date July 21, 2016.

**49-1494 Candidates for elective office; statement of financial interest; filing; time; supplementary statements; failure to file; effect.**

(1) An individual who files to appear on the ballot for election to an elective office specified in section 49-1493 shall file a statement of financial interests for the preceding calendar year with the commission.

(2) Candidates for the elective offices specified in section 49-1493 who qualify other than by filing shall file a statement for the preceding calendar year with the commission within five days after becoming a candidate or being appointed to that elective office.

(3) A statement of financial interests shall be preserved for a period of not less than five years by the commission.

(4) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election prior to January 1 of the year in which the election is held, the candidate shall file supplementary statements, covering the preceding calendar year, with the commission on or before March 1 of the year in which the election is held.

(5) A candidate for an elective office specified in section 49-1493 who fails to file a statement of financial interests as required in subsection (1) or (2) of this section within five days after the deadline in subsection (4) of this section and section 49-1493 shall not appear on the ballot.

**Source:** Laws 1976, LB 987, § 94; Laws 1983, LB 479, § 3; Laws 2001, LB 242, § 10; Laws 2005, LB 242, § 36; Laws 2016, LB400, § 2. Effective date July 21, 2016.

**49-14,102 Contracts with government bodies; procedure; powers of certain cities; purpose.**

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

(5) Notwithstanding any other provision of this section, any city of the metropolitan, primary, or first class may prohibit contracts over a specific dollar amount in which a public official or a public employee of such city may have an interest.

(6) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

(7) This section does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

**Source:** Laws 1976, LB 987, § 102; Laws 2005, LB 242, § 46; Laws 2014, LB364, § 1.

**(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION**

**49-14,120 Commission; members; expenses.**

All members of the commission shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55; Laws 2011, LB292, § 1.



**49-14,122 Commission; field investigations and audits; purpose.**

The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission under the Nebraska Political Accountability and Disclosure Act. Any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his or her opponent or opponents as well. The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report, or other statement filed under the act if the commission or the executive director deems such investigations or audits necessary to carry out the purposes of the act.

**Source:** Laws 1976, LB 987, § 122; Laws 1993, LB 587, § 18; Laws 2013, LB79, § 26.

**49-14,123 Commission; duties.**

In addition to any other duties prescribed by law, the commission shall:

(1) Adopt and promulgate rules and regulations to carry out the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the act and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the act;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the act;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the act upon the request of a person or government body directly covered or affected by the act. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations adopted and promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act and remit all such funds to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

**Source:** Laws 1976, LB 987, § 123; Laws 1981, LB 134, § 9; Laws 1981, LB 545, § 13; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12; Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3; Laws 2013, LB79, § 27.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **49-14,124 Alleged violation; preliminary investigation by commission; powers; notice.**

(1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon:

(a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;

(b) The recommendation of the executive director; or

(c) The commission's own motion.

(2) For purposes of conducting preliminary investigations under the Nebraska Political Accountability and Disclosure Act, the commission shall have the powers possessed by the courts of this state to issue subpoenas, and the district court shall have jurisdiction to enforce such subpoenas.

(3) The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days after the commencement of the investigation.

(4) Within fifteen days after the filing of a sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

(5) Each governing body shall cooperate with the commission in the conduct of its investigations.

**Source:** Laws 1976, LB 987, § 124; Laws 1997, LB 49, § 10; Laws 1997, LB 420, § 21; Laws 1999, LB 578, § 1; Laws 2005, LB 242, § 57; Laws 2006, LB 188, § 16; Laws 2013, LB79, § 28.

#### **49-14,124.01 Preliminary investigation; confidential; exception.**

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act requests that the proceedings be public. If the commission determines that there was no violation of the act or any rule or regulation adopted and promulgated under the act, the records and actions relative to the investigation and determination shall remain confidential unless the alleged violator requests that the records and actions be made public. If the commission determines that there was a violation, the records and actions shall be made public as soon as practicable after the determination is made.

**Source:** Laws 2005, LB 242, § 58; Laws 2013, LB79, § 29.

**49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.**

At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

**Source:** Laws 2007, LB464, § 4; Laws 2013, LB79, § 30.

**49-14,125 Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.**

(1) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is no probable cause for belief that a person has violated the Nebraska Political Accountability and Disclosure Act or any rule or regulation adopted and promulgated thereunder or if the commission determines that there is insufficient evidence to reasonably believe that the person could be found to have violated the act, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that the Nebraska Political Accountability and Disclosure Act or a rule or regulation adopted and promulgated thereunder has been violated and if the commission determines that there is sufficient evidence to reasonably believe that the person could be found to have violated the act, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. The commission may appoint a hearing officer to preside over the proceedings.

(3) All proceedings of the commission pursuant to this section shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of the act or

any rule or regulation adopted and promulgated thereunder requests an open session.

(4) The commission shall have the powers possessed by the courts of this state to issue subpoenas in connection with proceedings under this section, and the district court shall have jurisdiction to enforce such subpoenas.

(5) All testimony shall be under oath which shall be administered by a member of the commission, the hearing officer, or any other person authorized by law to administer oaths and affirmations.

(6) Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state.

(7) All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court.

(8) Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding.

(9) The commission shall cause a record to be made of all proceedings pursuant to this section.

(10) At the conclusion of proceedings concerning an alleged violation, the commission shall deliberate on the evidence and determine whether there has been a violation of the Nebraska Political Accountability and Disclosure Act.

**Source:** Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10; Laws 1997, LB 420, § 22; Laws 1999, LB 578, § 2; Laws 2005, LB 242, § 59; Laws 2006, LB 188, § 17; Laws 2013, LB79, § 31.

**49-14,126 Commission; violation; orders; civil penalty; costs of hearing.**

The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

- (1) Cease and desist from the violation;
- (2) File any report, statement, or other information as required;
- (3) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation; or
- (4) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.

**Source:** Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5; Laws 2011, LB176, § 1; Laws 2013, LB79, § 32.

**49-14,129 Commission; suspend or modify reporting requirements; conditions.**

The commission, by order, may suspend or modify any of the reporting requirements of the Nebraska Political Accountability and Disclosure Act, in a particular case, for good cause shown, or if it finds that literal application of the act works a manifestly unreasonable hardship and if it also finds that such

suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required by this section.

**Source:** Laws 1976, LB 987, § 129; Laws 1980, LB 535, § 19; Laws 1993, LB 587, § 19; Laws 2013, LB79, § 33.

**49-14,132 Filings; limitation of use.**

Information copied from campaign statements, registration forms, activity reports, statements of financial interest, and other filings required by the Nebraska Political Accountability and Disclosure Act shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that (1) the name and address of any political committee or entity specified in subsection (1) of section 49-1469 may be used for soliciting contributions from such committee or entity and (2) the use of information copied or otherwise obtained from statements, forms, reports, and other filings required by the act in newspapers, magazines, books, or other similar communications is permissible as long as the principal purpose of using such information is not to communicate any contributor information listed thereon for the purpose of soliciting contributions or for other commercial purposes.

**Source:** Laws 1976, LB 987, § 132; Laws 1981, LB 134, § 12; Laws 2005, LB 242, § 61; Laws 2013, LB79, § 34.

**49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.**

The Attorney General has jurisdiction to enforce the criminal provisions of the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the act occurs shall have concurrent jurisdiction.

**Source:** Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6; Laws 2013, LB79, § 35.

**49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.**

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-14,123, and 49-14,123.01 and subdivision (4) of section 49-14,126. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act. Any money in the Nebraska Accountability and Disclosure 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.

On April 25, 2013, the State Treasurer shall transfer \$630,870 from the Campaign Finance Limitation Cash Fund to the Nebraska Accountability and Disclosure Commission Cash Fund to be used for development, implementation, and maintenance of an electronic filing system for campaign statements and other reports under the Nebraska Political Accountability and Disclosure Act and for making such statements and reports available to the public on the

web site of the commission. The State Treasurer shall transfer the balance of the Campaign Finance Limitation Cash Fund to the Election Administration Fund on or before July 5, 2013, or as soon thereafter as administratively possible.

**Source:** Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25; Laws 2011, LB176, § 2; Laws 2013, LB79, § 36.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**(f) DIGITAL AND ELECTRONIC FILING**

**49-14,141 Electronic filing system; campaign statements and reports; availability; procedures for filings.**

(1) The commission shall develop, implement, and maintain an electronic filing system for campaign statements and other reports required to be filed with the commission under the Nebraska Political Accountability and Disclosure Act and shall provide for such statements and reports to be made available to the public on its web site as soon as practicable.

(2) The commission may adopt procedures for the digital and electronic filing of any report or statement with the commission as required by the act. Any procedures for digital filing shall comply with the provisions of section 86-611. The commission may adopt authentication procedures to be used as a verification process for statements or reports filed digitally or electronically. Compliance with authentication procedures adopted by the commission shall have the same validity as a signature on any report, statement, or verification statement.

**Source:** Laws 1999, LB 581, § 3; Laws 2002, LB 1105, § 438; Laws 2013, LB79, § 37.

**ARTICLE 15**

**NEBRASKA SHORT FORM ACT**

**Section**

- 49-1501. Repealed. Laws 2012, LB 1113, § 50.
- 49-1502. Repealed. Laws 2012, LB 1113, § 50.
- 49-1503. Repealed. Laws 2012, LB 1113, § 50.
- 49-1504. Repealed. Laws 2012, LB 1113, § 50.
- 49-1505. Repealed. Laws 2012, LB 1113, § 50.
- 49-1506. Repealed. Laws 2012, LB 1113, § 50.
- 49-1507. Repealed. Laws 2012, LB 1113, § 50.
- 49-1508. Repealed. Laws 2012, LB 1113, § 50.
- 49-1509. Repealed. Laws 2012, LB 1113, § 50.
- 49-1510. Repealed. Laws 2012, LB 1113, § 50.
- 49-1511. Repealed. Laws 2012, LB 1113, § 50.
- 49-1512. Repealed. Laws 2012, LB 1113, § 50.
- 49-1513. Repealed. Laws 2012, LB 1113, § 50.
- 49-1514. Repealed. Laws 2012, LB 1113, § 50.
- 49-1515. Repealed. Laws 2012, LB 1113, § 50.
- 49-1516. Repealed. Laws 2012, LB 1113, § 50.
- 49-1517. Repealed. Laws 2012, LB 1113, § 50.
- 49-1518. Repealed. Laws 2012, LB 1113, § 50.
- 49-1519. Repealed. Laws 2012, LB 1113, § 50.



## Section

49-1520. Repealed. Laws 2012, LB 1113, § 50.  
49-1521. Repealed. Laws 2012, LB 1113, § 50.  
49-1522. Repealed. Laws 2012, LB 1113, § 50.  
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49-1559. Repealed. Laws 2012, LB 1113, § 50.  
49-1560. Repealed. Laws 2012, LB 1113, § 50.  
49-1561. Repealed. Laws 2012, LB 1113, § 50.  
49-1562. Repealed. Laws 2012, LB 1113, § 50.

**49-1501 Repealed. Laws 2012, LB 1113, § 50.**

**49-1502 Repealed. Laws 2012, LB 1113, § 50.**

**49-1503 Repealed. Laws 2012, LB 1113, § 50.**

**49-1504 Repealed. Laws 2012, LB 1113, § 50.**

**49-1505 Repealed. Laws 2012, LB 1113, § 50.**

**49-1506 Repealed. Laws 2012, LB 1113, § 50.**

**49-1507 Repealed. Laws 2012, LB 1113, § 50.**

**49-1508 Repealed. Laws 2012, LB 1113, § 50.**

**49-1509 Repealed. Laws 2012, LB 1113, § 50.**

- 49-1510 Repealed. Laws 2012, LB 1113, § 50.
- 49-1511 Repealed. Laws 2012, LB 1113, § 50.
- 49-1512 Repealed. Laws 2012, LB 1113, § 50.
- 49-1513 Repealed. Laws 2012, LB 1113, § 50.
- 49-1514 Repealed. Laws 2012, LB 1113, § 50.
- 49-1515 Repealed. Laws 2012, LB 1113, § 50.
- 49-1516 Repealed. Laws 2012, LB 1113, § 50.
- 49-1517 Repealed. Laws 2012, LB 1113, § 50.
- 49-1518 Repealed. Laws 2012, LB 1113, § 50.
- 49-1519 Repealed. Laws 2012, LB 1113, § 50.
- 49-1520 Repealed. Laws 2012, LB 1113, § 50.
- 49-1521 Repealed. Laws 2012, LB 1113, § 50.
- 49-1522 Repealed. Laws 2012, LB 1113, § 50.
- 49-1523 Repealed. Laws 2012, LB 1113, § 50.
- 49-1524 Repealed. Laws 2012, LB 1113, § 50.
- 49-1525 Repealed. Laws 2012, LB 1113, § 50.
- 49-1526 Repealed. Laws 2012, LB 1113, § 50.
- 49-1527 Repealed. Laws 2012, LB 1113, § 50.
- 49-1528 Repealed. Laws 2012, LB 1113, § 50.
- 49-1529 Repealed. Laws 2012, LB 1113, § 50.
- 49-1530 Repealed. Laws 2012, LB 1113, § 50.
- 49-1531 Repealed. Laws 2012, LB 1113, § 50.
- 49-1532 Repealed. Laws 2012, LB 1113, § 50.
- 49-1533 Repealed. Laws 2012, LB 1113, § 50.
- 49-1534 Repealed. Laws 2012, LB 1113, § 50.
- 49-1535 Repealed. Laws 2012, LB 1113, § 50.
- 49-1536 Repealed. Laws 2012, LB 1113, § 50.
- 49-1537 Repealed. Laws 2012, LB 1113, § 50.
- 49-1538 Repealed. Laws 2012, LB 1113, § 50.
- 49-1539 Repealed. Laws 2012, LB 1113, § 50.
- 49-1540 Repealed. Laws 2012, LB 1113, § 50.

49-1541 Repealed. Laws 2012, LB 1113, § 50.

49-1542 Repealed. Laws 2012, LB 1113, § 50.

49-1543 Repealed. Laws 2012, LB 1113, § 50.

49-1544 Repealed. Laws 2012, LB 1113, § 50.

49-1545 Repealed. Laws 2012, LB 1113, § 50.

49-1546 Repealed. Laws 2012, LB 1113, § 50.

49-1547 Repealed. Laws 2012, LB 1113, § 50.

49-1548 Repealed. Laws 2012, LB 1113, § 50.

49-1549 Repealed. Laws 2012, LB 1113, § 50.

49-1550 Repealed. Laws 2012, LB 1113, § 50.

49-1551 Repealed. Laws 2012, LB 1113, § 50.

49-1552 Repealed. Laws 2012, LB 1113, § 50.

49-1553 Repealed. Laws 2012, LB 1113, § 50.

49-1554 Repealed. Laws 2012, LB 1113, § 50.

49-1555 Repealed. Laws 2012, LB 1113, § 50.

49-1556 Repealed. Laws 2012, LB 1113, § 50.

49-1557 Repealed. Laws 2012, LB 1113, § 50.

49-1558 Repealed. Laws 2012, LB 1113, § 50.

49-1559 Repealed. Laws 2012, LB 1113, § 50.

49-1560 Repealed. Laws 2012, LB 1113, § 50.

49-1561 Repealed. Laws 2012, LB 1113, § 50.

49-1562 Repealed. Laws 2012, LB 1113, § 50.

## ARTICLE 17

### CONSTITUTION OF NEBRASKA

#### Section

49-1701. Constitution of Nebraska; Revisor of Statutes; duties; Secretary of State; review; Clerk of the Legislature; duties.

**49-1701 Constitution of Nebraska; Revisor of Statutes; duties; Secretary of State; review; Clerk of the Legislature; duties.**

(1) Except as provided in subsection (6) of this section, following each regular session of the Legislature, the Revisor of Statutes shall compile an updated copy of the Constitution of Nebraska, showing all sections as they exist at that time and including notes after the end of each section as follows:

(a) For each section, the Revisor of Statutes shall provide a note referencing the source of such section and any amendments thereto;

(b) If a section is declared unconstitutional or inoperative, in whole or in part, by the final judgment of a federal court or the Nebraska Supreme Court, the Revisor of Statutes shall provide a note to that effect. The Attorney General shall assist the Revisor of Statutes in complying with this subdivision by promptly notifying the Revisor of Statutes when any section is declared unconstitutional or inoperative; and

(c) For any section, the Revisor of Statutes may provide additional notes at his or her discretion.

(2) The Revisor of Statutes shall, within two days after the Legislature has adjourned sine die, transmit the updated copy of the Constitution of Nebraska as compiled under subsection (1) of this section to the Secretary of State for his or her review to determine whether the updated copy accurately reflects the text of the Constitution of Nebraska as it exists at that time. If the Secretary of State determines that any changes are necessary, he or she shall, within five days after receipt of the updated copy, notify the Revisor of Statutes of the changes. The Revisor of Statutes shall make such changes and then promptly return the updated copy to the Secretary of State for further review. If the Secretary of State determines that no changes are necessary or that all necessary changes have been made by the Revisor of Statutes, the Secretary of State shall certify the updated copy as an accurate reflection of the text of the Constitution of Nebraska as it exists at that time. The Secretary of State shall then transmit the certified copy to the Clerk of the Legislature for distribution no later than ten days after the Legislature has adjourned sine die.

(3) After receiving the certified copy of the Constitution of Nebraska from the Secretary of State pursuant to subsection (2) of this section, the Clerk of the Legislature shall:

(a) Make the certified copy available in electronic form on the Legislature's web site;

(b) Include the certified copy in the session laws compiled and published pursuant to section 49-501.01; and

(c) Print pamphlets of the certified copy for distribution to the public upon request.

(4) The certified copies printed by the Clerk of the Legislature pursuant to subdivisions (3)(b) and (3)(c) of this section shall constitute the official version of the Constitution of Nebraska and may be cited as prima facie evidence of the law in all courts of this state.

(5) The Secretary of State shall maintain in his or her office a copy of every edition of the Constitution of Nebraska certified pursuant to this section.

(6) Following any regular session of the Legislature, if the Revisor of Statutes determines that there have been no changes to the text of the Constitution of Nebraska and no changes to the notes required by subsection (1) of this section, the Revisor of Statutes may decide not to compile an updated copy of the Constitution of Nebraska for that year. If the Revisor of Statutes decides not to compile an updated copy for the year, he or she shall notify the Secretary of State and the Clerk of the Legislature of such fact and the Clerk of the Legislature shall continue to use the most recent year's certified copy for purposes of subsection (3) of this section.

**Source:** Laws 2016, LB686, § 1.

Effective date July 21, 2016.

## CHAPTER 50

### LEGISLATURE

#### Article.

1. General Provisions. 50-114.03.
3. Next Generation Business Growth Act. 50-301 to 50-306.
4. Legislative Council. 50-401.01 to 50-444.
5. Bioscience Steering Committee. 50-501 to 50-508.
11. Legislative Districts. 50-1101 to 50-1154.
12. Legislative Performance Audit Act. 50-1202 to 50-1215.
13. Review of Boards and Commissions. 50-1302.

#### ARTICLE 1

##### GENERAL PROVISIONS

#### Section

50-114.03. Clerk; reports; list; distribution; establish requirements for reports.

#### **50-114.03 Clerk; reports; list; distribution; establish requirements for reports.**

(1) The Clerk of the Legislature shall periodically prepare and distribute electronically to all members of the Legislature a list of all reports received from state agencies, boards, and commissions. Such lists shall be prepared and distributed to each legislator no less frequently than once during the first ten days of each legislative session. Upon request by a legislator, the clerk shall arrange for any legislator to receive an electronic copy of any such report.

(2) A state agency, board, or commission or other public entity which is required to provide a report to the Legislature shall submit the report electronically. The Clerk of the Legislature may establish requirements for the electronic submission, distribution, and format of such reports. The clerk may accept a report in written form only upon a showing of good cause.

**Source:** Laws 1979, LB 322, § 79; Laws 2003, LB 114, § 1; Laws 2012, LB719, § 2; Laws 2012, LB782, § 74.

#### ARTICLE 3

##### NEXT GENERATION BUSINESS GROWTH ACT

#### Section

- 50-301. Act, how cited.
- 50-302. Legislative findings and intent.
- 50-303. Legislature's Venture Development and Innovation Task Force; created; members; plan; preparation and submission.
- 50-304. Employment of nonprofit organization.
- 50-305. Appropriation intent.
- 50-306. Act, termination.

#### **50-301 Act, how cited.**

Sections 50-301 to 50-306 shall be known and may be cited as the Next Generation Business Growth Act.

**Source:** Laws 2016, LB1083, § 1.  
Effective date July 21, 2016.  
Termination date January 1, 2017.

#### **50-302 Legislative findings and intent.**

The Legislature finds that there is an important role that innovation and entrepreneurship play in the economic well-being of the state. It is the intent of the Legislature to promote such innovation and entrepreneurship through the Next Generation Business Growth Act.

**Source:** Laws 2016, LB1083, § 2.  
Effective date July 21, 2016.  
Termination date January 1, 2017.

#### **50-303 Legislature's Venture Development and Innovation Task Force; created; members; plan; preparation and submission.**

(1) The Legislature's Venture Development and Innovation Task Force is created. The Executive Board of the Legislative Council shall appoint six members of the Legislature to the task force. The Executive Board shall appoint one of the six members as chairperson and another member as vice-chairperson.

(2) The task force shall develop a statewide strategic plan to cultivate a climate of entrepreneurship and innovation. The task force shall adopt policy criteria to be used in the development of the plan. The plan shall include: (a) An inventory of existing state-sponsored and locally sponsored programs and resources that are targeted to small businesses, microenterprises, and entrepreneurial endeavors in the state; (b) an economic impact analysis of the existing programs under the Business Innovation Act; (c) an overview of best practices from other states; (d) a review of previously issued statewide strategic plans focused on high-growth businesses; and (e) various policy options.

(3) On or before December 1, 2016, the Legislature's Venture Development and Innovation Task Force shall prepare and electronically submit the statewide strategic plan to the Clerk of the Legislature.

**Source:** Laws 2016, LB1083, § 3.  
Effective date July 21, 2016.  
Termination date January 1, 2017.

#### **Cross References**

**Business Innovation Act**, see section 81-12,152.

#### **50-304 Employment of nonprofit organization.**

The Legislature's Venture Development and Innovation Task Force, in consultation with the Executive Board of the Legislative Council, shall employ a nonprofit organization to provide research, analysis, and recommendations for the development of the statewide strategic plan required by section 50-303.

**Source:** Laws 2016, LB1083, § 4.  
Effective date July 21, 2016.  
Termination date January 1, 2017.



**50-305 Appropriation intent.**

It is the intent of the Legislature to appropriate seventy-five thousand dollars from the General Fund to the Legislative Council for carrying out the purposes of the Next Generation Business Growth Act.

**Source:** Laws 2016, LB1083, § 5.  
Effective date July 21, 2016.  
Termination date January 1, 2017.

**50-306 Act, termination.**

The Next Generation Business Growth Act terminates on January 1, 2017.

**Source:** Laws 2016, LB1083, § 6.  
Effective date July 21, 2016.  
Termination date January 1, 2017.

**ARTICLE 4****LEGISLATIVE COUNCIL**

## Section

- 50-401.01. Legislative Council; executive board; members; selection; powers and duties.
- 50-405. Legislative Council; duties; investigations; studies.
- 50-406. Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.
- 50-407. Legislative Council; committees; subpoenas; enforcement; refusal to testify.
- 50-413. Legislative Council; minutes of meetings; reports.
- 50-417. Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.
- 50-417.02. Repealed. Laws 2011, LB 509, § 55.
- 50-417.03. Repealed. Laws 2011, LB 509, § 55.
- 50-417.04. Repealed. Laws 2011, LB 509, § 55.
- 50-417.05. Repealed. Laws 2011, LB 509, § 55.
- 50-417.06. Repealed. Laws 2011, LB 509, § 55.
- 50-419.02. Legislative Fiscal Analyst; revenue volatility report; contents.
- 50-422. Repealed. Laws 2012, LB 782, § 253.
- 50-424. Repealed. Laws 2016, LB746, § 30.
- 50-425. Education Committee of Legislature; study uses of State Lottery Act proceeds dedicated to education; report.
- 50-426. Statewide vision for education; legislative findings.
- 50-427. Statewide vision for education; Education Committee of Legislature; duties; report.
- 50-428. Education Committee of the Legislature; study postsecondary education affordability.
- 50-429. Intergenerational Poverty Task Force; created; members.
- 50-430. Intergenerational Poverty Task Force; duties.
- 50-431. Intergenerational Poverty Task Force; powers.
- 50-432. Intergenerational Poverty Task Force; reports; contents.
- 50-433. Intergenerational Poverty Task Force; termination.
- 50-434. Committee on Justice Reinvestment Oversight; created; members; duties; report.
- 50-444. Repealed. Laws 2012, LB 706, § 1.

**50-401.01 Legislative Council; executive board; members; selection; powers and duties.**

(1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the

Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 17, 30, 32 to 38, 40 to 44, 47, and 48, two from legislative districts Nos. 2, 3, 15, 16, 19, 21 to 29, 45, and 46, and two from legislative districts Nos. 4 to 14, 18, 20, 31, 39, and 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature, including the adoption of policies by the executive board which permit (i) the purchasing of an annuity for an employee who retires or (ii) the crediting of amounts to an employee's deferred compensation account under section 84-1504. The payments to or on behalf of an employee may be staggered to comply with other law; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. The Legislative Performance Audit Committee shall recommend the person to be appointed Legislative Auditor. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

**Source:** Laws 1937, c. 118, § 1, p. 421; Laws 1939, c. 60, § 1, p. 261; C.S.Supp., 1941, § 50-501; Laws 1943, c. 118, § 1, p. 414; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(2), p. 445; Laws 1951, c. 169, § 1, p. 655; Laws 1965, c. 310, § 1, p. 872; Laws 1967, c. 595, § 1, p. 2026; Laws 1972, LB 1129, § 1; Laws 1973, LB 485, § 3; Laws 1992, LB 898, § 1; Laws 1993, LB 579, § 2; Laws 1994, LB 1243, § 18; Laws 1997, LB 314, § 2; Laws 2001, LB 75, § 1; Laws 2003, LB 510, § 1; Laws 2006, LB 956, § 1; Laws 2012, LB711, § 1.

#### **50-405 Legislative Council; duties; investigations; studies.**

It shall be the duty of the council (1) to investigate and study the possibilities for consolidation in state government for elimination of all unnecessary activities and of all duplication in office personnel and equipment and of the coordination of departmental activities or of methods of increasing efficiency

and effecting economies, (2) to investigate and study the possibilities of reforming the system of local government with a view to simplifying the organization of government, (3) to study the merit system as it relates to state and local government personnel, (4) to cooperate with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods, (5) to study and inquire into the financial administration of the state government and the subdivisions thereof, the problems of taxation, including assessment and collection of taxes, and the distribution of the tax burden, and (6) to study and inquire into future planning of capital construction of the state and its governmental agencies as to location and sites for expansion.

**Source:** Laws 1937, c. 118, § 3, p. 422; C.S.Supp.,1941, § 50-503; R.S. 1943, § 50-405; Laws 1969, c. 431, § 1, p. 1453; Laws 1986, LB 996, § 1; Laws 2012, LB782, § 75; Laws 2013, LB222, § 17.

**50-406 Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.**

In the discharge of any duty imposed by the Legislative Council, by statute, or by a resolution of the Legislature, the council, any committee thereof, and any standing or special committee created by statute or resolution of the Legislature may hold public hearings and may administer oaths, issue subpoenas when the committee has received prior approval by a majority vote of the Executive Board of the Legislative Council to issue subpoenas in connection with the specific inquiry or investigation in question, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. The council or the committee may require any state agency, political subdivision, or person to provide information relevant to the committee's work, and the state agency, political subdivision, or person shall provide the information requested within thirty days after the request except as provided for in a subpoena. The statute or resolution creating a committee may prescribe limitations on the authority granted by this section.

Litigation to compel or quash compliance with authority exercised pursuant to this section shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered.

The district court of Lancaster County has jurisdiction over all litigation arising under this section. In all such litigation the executive board shall provide for legal representation for the council or committee.

**Source:** Laws 1937, c. 118, § 4, p. 422; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-406; Laws 1949, c. 168, § 3, p. 445; Laws 1965, c. 313, § 1, p. 875; Laws 2013, LB613, § 1.

**50-407 Legislative Council; committees; subpoenas; enforcement; refusal to testify.**

In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, the district court of Lancaster County or the judge thereof, on application of a member of the council, shall compel obedience by

proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

If a witness refuses to testify before a special committee of the Legislature authorized pursuant to section 50-404 on the basis of the privilege against self-incrimination, the chairperson of the committee may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

**Source:** Laws 1937, c. 118, § 4, p. 423; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-407; Laws 1949, c. 168, § 4, p. 445; Laws 1990, LB 1246, § 16; Laws 2013, LB613, § 2.

**50-413 Legislative Council; minutes of meetings; reports.**

The Legislative Council shall keep complete minutes of its meetings and shall submit electronically periodical reports to the members of the Legislature.

**Source:** Laws 1937, c. 118, § 9, p. 424; C.S.Supp.,1941, § 50-509; R.S. 1943, § 50-413; Laws 1949, c. 168, § 7, p. 446; Laws 2012, LB782, § 76.

**50-417 Nebraska Retirement Systems Committee; public retirement systems; existing or proposed; duties.**

The Nebraska Retirement Systems Committee shall study any legislative proposal, bill, or amendment, other than an amendment proposed by the Committee on Enrollment and Review, affecting any public retirement system, existing or proposed, established by the State of Nebraska or any political subdivision thereof and report electronically the results of such study to the Legislature, which report shall, when applicable, include an actuarial analysis and cost estimate and the recommendation of the Nebraska Retirement Systems Committee regarding passage of any bill or amendment. To assist the committee in the performance of such duties, the committee may consult with and utilize the services of any officer, department, or agency of the state and may from time to time engage the services of a qualified and experienced actuary. In the absence of any report from such committee, the Legislature shall consider requests from groups seeking to have retirement plans established for them and such other proposed legislation as is pertinent to existing retirement systems.

**Source:** Laws 1959, c. 243, § 2, p. 832; Laws 1989, LB 189, § 2; Laws 2011, LB10, § 1; Laws 2012, LB782, § 77.

**50-417.02 Repealed. Laws 2011, LB 509, § 55.**

**50-417.03 Repealed. Laws 2011, LB 509, § 55.**

**50-417.04 Repealed. Laws 2011, LB 509, § 55.**

**50-417.05 Repealed. Laws 2011, LB 509, § 55.**

**50-417.06 Repealed. Laws 2011, LB 509, § 55.**

**50-419.02 Legislative Fiscal Analyst; revenue volatility report; contents.**

(1) On November 15, 2016, the Legislative Fiscal Analyst shall prepare and electronically submit a revenue volatility report to the Appropriations Committee of the Legislature. Every two years thereafter the Legislative Fiscal Analyst

shall prepare a revenue volatility report to append to the annual report required under section 77-2715.01. The report shall also be posted on the Legislature's web site.

(2) The report shall:

(a) Evaluate the tax base and the tax revenue volatility of revenue streams that provide funding for the state General Fund budget;

(b) Identify federal funding included in the state budget and any projected changes in the amount or value of federal funding or potential areas in which federal funding could be lost;

(c) Identify current and projected balances of the Cash Reserve Fund;

(d) Analyze the adequacy of current and projected balances of the Cash Reserve Fund in relation to the tax revenue volatility and the risk of a reduction in the amount or value of federal funding or potential areas in which federal funding could be lost;

(e) Include revenue projections for the ensuing two fiscal years included in the impending biennial budget; and

(f) Contain any other recommendations that the Legislative Fiscal Analyst determines are necessary.

**Source:** Laws 2015, LB33, § 1.

**50-422 Repealed. Laws 2012, LB 782, § 253.**

**50-424 Repealed. Laws 2016, LB746, § 30.**

Operative date April 19, 2016.

**50-425 Education Committee of Legislature; study uses of State Lottery Act proceeds dedicated to education; report.**

The Education Committee of the Legislature shall conduct a study of potential uses of the funds dedicated to education from proceeds of the lottery conducted pursuant to the State Lottery Act. The committee shall submit a report electronically on the findings and any recommendations to the Clerk of the Legislature on or before December 31, 2014. Factors the study shall consider, but not be limited to, include:

(1) The educational priorities of the state;

(2) What types of educational activities are suited to being funded by state lottery funds as opposed to state general funds;

(3) Whether state lottery funds should be used for significant projects requiring temporary funding or to sustain ongoing activities; and

(4) Whether periodic reviews of the use of lottery funds for education should be scheduled.

**Source:** Laws 2013, LB497, § 3.

**Cross References**

**State Lottery Act**, see section 9-801.

**50-426 Statewide vision for education; legislative findings.**

(1) The Legislature finds that:

(a) In order to continue the pursuit of the good life in Nebraska, a common statewide vision must be refined to address the potential of all students across the state; and

(b) Individuals and businesses making reasoned decisions about where to locate often place the quality of education as one of the primary considerations. Quality education not only serves as an indicator of the current quality of life in a community but also as a determinant for what lies ahead.

(2) It is the intent of the Legislature to focus educational resources from all sources in our state toward a common statewide vision for the future through collaborative efforts to achieve the best possible results for all Nebraskans, our communities, and our state.

**Source:** Laws 2014, LB1103, § 1.

**50-427 Statewide vision for education; Education Committee of Legislature; duties; report.**

The Education Committee of the Legislature shall conduct a strategic planning process to create the statewide vision for education in Nebraska described in section 50-426 which shall include aspirational goals, visionary objectives, meaningful priorities, and practical strategies. The committee or subcommittees thereof may conduct meetings, work sessions, and focus groups with individuals and representatives of educational interests, taxpayer groups, the business community, or any other interested entities. The committee shall also hold at least three public hearings to receive testimony from the general public in locations that represent a variety of educational situations. The committee shall submit a report regarding such process electronically to the Clerk of the Legislature on or before December 31, 2014.

**Source:** Laws 2014, LB1103, § 2.

**50-428 Education Committee of the Legislature; study postsecondary education affordability.**

The Education Committee of the Legislature shall conduct a study of postsecondary education affordability in Nebraska and alternatives for supporting students and families with the cost. The committee shall electronically report its recommendations to the Clerk of the Legislature on or before December 31, 2015.

**Source:** Laws 2015, LB519, § 39.

**50-429 Intergenerational Poverty Task Force; created; members.**

(1) The Intergenerational Poverty Task Force is created. The executive committee of the task force shall consist of the following voting members:

(a) The chairperson of the Health and Human Services Committee of the Legislature;

(b) The chairperson of the Appropriations Committee of the Legislature; and

(c) Three at-large members appointed by the Executive Board of the Legislative Council.

The voting members of the executive committee shall choose a chairperson and vice-chairperson from among the voting members.



The chief executive officer of the Department of Health and Human Services or his or her designee, the Commissioner of Labor, and the Commissioner of Education shall be nonvoting, ex officio members of the executive committee of the task force.

(2) The remaining members of the task force shall be nonvoting members appointed by the executive committee of the task force through an application and selection process, representing (a) advocacy groups that focus on childhood poverty issues and education issues, (b) academic experts in childhood poverty or education, (c) service providers, (d) educational institutions, (e) workforce development agencies, and (f) experts in early childhood education. The members appointed pursuant to this subsection shall constitute the advisory committee to the task force.

**Source:** Laws 2015, LB607, § 4.

**Note:** Intergenerational Poverty Task Force terminates December 31, 2016.

### **50-430 Intergenerational Poverty Task Force; duties.**

The Intergenerational Poverty Task Force shall, with respect to programs, including, but not limited to, the aid to dependent children program described in section 43-513, the federal Supplemental Nutrition Assistance Program established pursuant to 7 U.S.C. 2011 et seq., as such sections existed on January 1, 2015, the child care assistance program described in section 68-1206, and the Employment First program developed pursuant to the self-sufficiency contract described in sections 68-1719 to 68-1724 and rules and regulations of the Department of Health and Human Services:

(1) Share, examine, and analyze data and information regarding intergenerational poverty in the state with a primary focus on data and information regarding children who are at risk of continuing the cycle of poverty unless outside intervention is made and develop effective and efficient plans, programs, and recommendations to help such children escape the cycle of poverty;

(2) Encourage participation and input from academic experts, advocacy groups, nonprofit corporations, local governments, and faith-based institutions in exploring strategies and solutions to help children who are victims of intergenerational poverty escape the cycle of poverty;

(3) Study, evaluate, and report on the status and effectiveness of policies, procedures, and programs implemented by other states and by nongovernmental entities that address the needs of and that provide services to children affected by intergenerational poverty;

(4) Identify policies, procedures, and programs, including any lack of inter-agency data sharing, lack of policy coordination, or current federal requirements, that are impeding efforts to help children in the state affected by intergenerational poverty escape the cycle of poverty and recommend changes to those policies and procedures;

(5) Create a long-range strategic plan containing:

(a) Measurable goals and benchmarks, including future action needed to attain those goals and benchmarks, for decreasing the incidence of intergenerational poverty among the state's children and increasing the number of the state's children who escape the cycle of poverty; and

(b) Recommended data-supported changes to policies, procedures, and programs to address the needs of children affected by intergenerational poverty

and to help those children escape the cycle of poverty, including the steps that will be required to make the recommended changes and whether further action is required by the Legislature or the federal government; and

(6) Protect the privacy of individuals living in poverty by using and distributing the data it collects or examines in compliance with federal requirements and with sections 84-712 to 84-712.09.

**Source:** Laws 2015, LB607, § 5.

#### **50-431 Intergenerational Poverty Task Force; powers.**

To accomplish its duties, the Intergenerational Poverty Task Force may:

(1) Request and receive from any state or local governmental entity or institution information relating to poverty in the state, including reports, audits, data, projections, and statistics; and

(2) Appoint special committees to advise and assist the task force. Members of any such special committee shall be appointed by the chairperson of the task force and may be members of the task force or individuals from the private or public sector. A special committee shall report to the task force on the progress of the special committee. Members of a special committee appointed under this section may not receive reimbursement or pay for work done in relation to the special committee.

**Source:** Laws 2015, LB607, § 6.

#### **50-432 Intergenerational Poverty Task Force; reports; contents.**

(1) On or before December 15, 2015, the Intergenerational Poverty Task Force shall submit a preliminary report and on or before December 15, 2016, the task force shall submit a final report (a) to the Governor and (b) electronically to the Executive Board of the Legislative Council.

(2) The preliminary report and the final report shall:

(a) Include the long-range strategic plan required pursuant to section 50-430;

(b) Describe how the task force fulfilled its statutory purposes and duties during the time period covered by the report;

(c) Describe policies, procedures, and programs that have been implemented or modified to help break the cycle of poverty for children affected or at risk of being affected by intergenerational poverty; and

(d) Contain recommendations on how the state should act to address issues relating to breaking the cycle of poverty for children affected or at risk of being affected by intergenerational poverty.

**Source:** Laws 2015, LB607, § 7.

#### **50-433 Intergenerational Poverty Task Force; termination.**

The Intergenerational Poverty Task Force terminates on December 31, 2016.

**Source:** Laws 2015, LB607, § 8.

#### **50-434 Committee on Justice Reinvestment Oversight; created; members; duties; report.**

(1) The Legislature finds that while serious crime in the State of Nebraska has not increased in the past five years, the prison population continues to

increase as does the amount spent on correctional issues. The Legislature further finds that a need exists to closely examine the criminal justice system of the State of Nebraska in order to increase public safety while concurrently reducing correctional spending and reinvesting in strategies that decrease crime and strengthen Nebraska communities.

(2) It is the intent of the Legislature that the State of Nebraska work cooperatively with the Council of State Governments Justice Center to study and identify innovative solutions and evidence-based practices to develop a data-driven approach to reduce correctional spending and reinvest savings in strategies that can decrease recidivism and increase public safety and for the executive, legislative, and judicial branches of Nebraska state government to work with the Council of State Governments Justice Center in this process.

(3) The Committee on Justice Reinvestment Oversight is created as a special legislative committee to maintain continuous oversight of the Nebraska Justice Reinvestment Initiative and related issues.

(4) The special legislative committee shall be comprised of five members of the Legislature selected by the Executive Board of the Legislative Council, including the chairperson of the Judiciary Committee of the Legislature who shall serve as chairperson of the special legislative committee.

(5) The Committee on Justice Reinvestment Oversight shall monitor and guide analysis and policy development in all aspects of the criminal justice system in Nebraska within the scope of the justice reinvestment initiative, including tracking implementation of evidence-based strategies as established in Laws 2015, LB605, and reviewing policies to improve public safety, reduce recidivism, and reduce spending on corrections in Nebraska. With assistance from the Council of State Governments Justice Center, the committee shall monitor performance and measure outcomes by collecting data from counties and relevant state agencies for analysis and reporting.

(6) The committee shall prepare and submit an annual report of its activities and findings and may make recommendations to improve any aspect of the criminal justice system. The committee shall deliver the report to the Governor, the Clerk of the Legislature, and the Chief Justice by September 1 of each year. The report to the clerk shall be delivered electronically.

**Source:** Laws 2014, LB907, § 11; R.S.Supp.,2014, § 28-1501; Laws 2015, LB605, § 76.

**50-444 Repealed. Laws 2012, LB 706, § 1.**

## ARTICLE 5

### BIOSCIENCE STEERING COMMITTEE

#### Section

- 50-501. Bioscience Steering Committee; created; members; prepare strategic plan; commission nonprofit corporation; Biotechnology Development Cash Fund; created; use; investment.
- 50-502. Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.
- 50-503. University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.
- 50-504. Water Funding Task Force; legislative findings.
- 50-505. Water Funding Task Force; created; members; qualifications; expenses.

## Section

50-506. Water Funding Task Force; consultation with other groups; meetings; consultant; termination.

50-507. Water Funding Task Force; report; contents.

50-508. Water Funding Task Force; funding; Department of Natural Resources; duties.

**50-501 Bioscience Steering Committee; created; members; prepare strategic plan; commission nonprofit corporation; Biotechnology Development Cash Fund; created; use; investment.**

(1) The Bioscience Steering Committee is created. The committee shall consist of the chairperson of the Revenue Committee of the Legislature or his or her designee, the chairperson of the Appropriations Committee or his or her designee, and three members of the Legislature selected by the Executive Board of the Legislative Council. The executive board shall appoint a chairperson and vice-chairperson of the committee.

(2) The committee shall conduct a study to measure the impact of the bioscience economy in Nebraska and prepare a strategic plan for growing the bioscience economy in Nebraska. The strategic plan shall report on any progress or remaining work since the last study conducted on the bioscience industry. The strategic plan shall further propose strategies for developing the bioscience economy and shall include, but not be limited to, strategies to (a) stimulate job growth in the fields of science, technology, and engineering throughout Nebraska, (b) encourage individuals and organizations engaged in the biotechnology businesses to locate and expand in Nebraska, (c) capture and commercialize technology that is discovered and developed in Nebraska, (d) grow Nebraska's investment capital market and incentivize investment in life science start-up companies, and (e) develop Nebraska's biotechnology workforce in cooperation with higher education institutions. The strategic plan shall estimate the wealth and number of jobs generated from expanding the bioscience economy.

(3) The committee, in consultation with the executive board, shall commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the study and strategic plan. The nonprofit corporation shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(6) of the Internal Revenue Code as defined in section 49-801.01, shall be engaged in activities to facilitate and promote the growth of life sciences within Nebraska, and shall be dedicated to the development and growth of the bioscience economy.

(4) The committee shall prepare and present electronically to the Legislature a statewide strategic plan for the bioscience economy during the One Hundred Fifth Legislature, First Session, for consideration by the Legislature.

(5)(a) The Biotechnology Development Cash Fund is created. The money in the fund shall be used to commission the nonprofit corporation and provide access to resources necessary for developing the study and strategic plan.

(b) The fund may receive gifts, bequests, grants, or other contributions or donations from public or private entities. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2009, LB246, § 1; Laws 2010, LB911, § 1; Laws 2016, LB1093, § 1.

Operative date July 21, 2016.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Nonprofit Corporation Act, see section 21-1901.

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

**50-502 Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.**

The Department of Administrative Services shall, on or before December 1 of each year, present its plan regarding the management of the state's health care insurance programs and the health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

**Source:** Laws 2013, LB620, § 1.

**50-503 University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.**

The University of Nebraska shall, on or before December 1 of each year, present its plan regarding the management of the university's health care insurance programs and its health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

**Source:** Laws 2013, LB620, § 2.

**50-504 Water Funding Task Force; legislative findings.**

The Legislature finds that:

(1) Nebraska's water resources are finite and must be wisely managed to ensure their continued availability for beneficial use;

(2) The state must invest in: (a) Research and data gathering; (b) further integrating the management of Nebraska's water supplies; (c) improving the state's aging and antiquated water supply infrastructure; (d) building new water supply infrastructure; (e) promoting coordination and collaboration among all water users; and (f) providing information to policymakers to justify a stable source of project funds;

(3) To determine the costs of effective conservation, sustainability, and management of Nebraska's water resources, the state's identified water needs must be compiled and organized and a process must be established in order to identify statewide projects and research recommendations; and

(4) To facilitate the creation of a funding process, a collaborative effort of experts representing all water interests and areas of the state is important to ensure fair and balanced water funding.

**Source:** Laws 2013, LB517, § 1.

**50-505 Water Funding Task Force; created; members; qualifications; expenses.**

(1) The Water Funding Task Force is created. The task force shall consist of the members of the Nebraska Natural Resources Commission and eleven additional members to be appointed by the Governor. The Director of Natural Resources or his or her designee, the chairperson of the Natural Resources Committee of the Legislature or his or her designee, and five additional

members of the Legislature appointed by the Executive Board of the Legislative Council shall be nonvoting, ex officio members of the task force. In appointing members to the task force, the Governor:

(a) Shall seek to create a broad-based task force with knowledge of and experience with and representative of Nebraska's water use and economy;

(b) Shall give equal recognition to the importance of both water quantity and water quality;

(c) Shall appoint one member from each of the following categories: Public power; public power and irrigation districts; irrigation districts; a metropolitan utilities district; municipalities; agriculture; wildlife conservation; livestock producers; agribusiness; manufacturing; and outdoor recreation users; and

(d) May solicit and accept nominations for appointments to the task force from recognized water interest groups in Nebraska.

(2) The members of the task force appointed by the Governor shall represent diverse geographic regions of the state, including urban and rural areas. Such members shall be appointed within thirty days after June 5, 2013. Members shall begin serving immediately following notice of appointment. Members shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties as members as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2013, LB517, § 2.

**50-506 Water Funding Task Force; consultation with other groups; meetings; consultant; termination.**

(1) The Water Funding Task Force may consult with other groups in its work, including, but not limited to, the University of Nebraska, the Department of Environmental Quality, the Game and Parks Commission, the United States Army Corps of Engineers, the United States Geological Survey, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, and the Natural Resources Conservation Service of the United States Department of Agriculture.

(2) For administrative and budgetary purposes, the task force shall be housed within the Department of Natural Resources. Additional advisory support may be requested from appropriate federal and state agencies.

(3) The task force may meet as necessary and may hire a consultant or consultants to facilitate the work and meetings of the task force and enter into agreements to achieve the objectives of the task force. The task force may create and use working groups or subcommittees as it deems necessary. Any contracts or agreements entered into under this subsection 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) The Water Funding Task Force terminates on December 31, 2013.

**Source:** Laws 2013, LB517, § 3.

**Cross References**

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

**50-507 Water Funding Task Force; report; contents.**



(1) On or before December 31, 2013, the Water Funding Task Force shall develop and provide a report electronically to the Legislature which contains the following:

(a) Recommendations for a strategic plan which prioritizes programs, projects, and activities in need of funding. The recommendations shall give equal consideration to and be classified into the following categories:

(i) Research, data, and modeling needed to assist the state in meeting its water management goals;

(ii) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance;

(iii) Conjunctive management, storage, and integrated management of ground water and surface water; and

(iv) Compliance with interstate compacts or agreements or other formal state contracts or agreements;

(b) Recommendations for ranking criteria to identify funding priorities based on, but not limited to, the following factors:

(i) The extent to which the program, project, or activity provides increased water productivity and otherwise maximizes the beneficial use of Nebraska's water resources for the benefit of its residents;

(ii) The extent to which the program, project, or activity assists the state in meeting its obligations under interstate compacts or decrees or other formal state contracts or agreements;

(iii) The extent to which the program, project, or activity utilizes objectives described in the Annual Report and Plan of Work for the Nebraska State Water Planning and Review Process issued by the Department of Natural Resources;

(iv) The extent to which the program, project, or activity has been approved for, but has not received, funding through an established state program;

(v) The cost-effectiveness of the program, project, or activity relative to achieving the state's water management goals;

(vi) The extent to which the program, project, or activity contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources; and

(vii) The extent to which the program, project, or activity contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural uses, recreation benefits, wildlife habitat, conservation of water resources, and preservation of water resources for future generations;

(c) Recommendations for legislation on a permanent structure and process through which the programs, projects, or activities described in this section will be provided with funding, including:

(i) A permanent governing board structure and membership;

(ii) An application process;

(iii) A statewide project distribution mechanism; and

(iv) A timeframe for funding allocations based on the list of programs, projects, and activities provided for in this section;

(d) Recommendations for the annual funding amount and the start date for distribution of funds; and

(e) Recommendations for statutory changes relating to regulatory authorities and to funds and programs administered by, and boards and commissions under the direction of, the department, based on the task force's evaluation of the efficiency of such funds, programs, boards, and commissions.

(2) The task force shall make every effort to identify and consult with all water-use stakeholder groups in Nebraska on the development of the recommendations required under sections 50-504 to 50-507.

**Source:** Laws 2013, LB517, § 4.

**50-508 Water Funding Task Force; funding; Department of Natural Resources; duties.**

The Department of Natural Resources shall establish a separate budget subprogram to account for funds appropriated to carry out sections 50-504 to 50-507. No later than February 1, 2014, the department shall notify the Natural Resources Committee of the Legislature and the Appropriations Committee of the Legislature regarding the projected unexpended and uncommitted balance remaining in the separate budget subprogram.

**Source:** Laws 2013, LB517, § 5.

**ARTICLE 11**

**LEGISLATIVE DISTRICTS**

Section

50-1101.	Transferred to section 50-1153.
50-1102.	Repealed. Laws 2011, LB 703, § 5.
50-1103.	Repealed. Laws 2011, LB 703, § 5.
50-1104.	Repealed. Laws 2011, LB 703, § 5.
50-1105.	Repealed. Laws 2011, LB 703, § 5.
50-1106.	Repealed. Laws 2011, LB 703, § 5.
50-1107.	Repealed. Laws 2011, LB 703, § 5.
50-1108.	Repealed. Laws 2011, LB 703, § 5.
50-1109.	Repealed. Laws 2011, LB 703, § 5.
50-1110.	Repealed. Laws 2011, LB 703, § 5.
50-1111.	Repealed. Laws 2011, LB 703, § 5.
50-1112.	Repealed. Laws 2011, LB 703, § 5.
50-1113.	Repealed. Laws 2011, LB 703, § 5.
50-1114.	Repealed. Laws 2011, LB 703, § 5.
50-1115.	Repealed. Laws 2011, LB 703, § 5.
50-1116.	Repealed. Laws 2011, LB 703, § 5.
50-1117.	Repealed. Laws 2011, LB 703, § 5.
50-1118.	Repealed. Laws 2011, LB 703, § 5.
50-1119.01.	Repealed. Laws 2011, LB 703, § 5.
50-1120.	Repealed. Laws 2011, LB 703, § 5.
50-1121.	Repealed. Laws 2011, LB 703, § 5.
50-1122.	Repealed. Laws 2011, LB 703, § 5.
50-1123.	Repealed. Laws 2011, LB 703, § 5.
50-1124.	Repealed. Laws 2011, LB 703, § 5.
50-1125.	Repealed. Laws 2011, LB 703, § 5.
50-1126.	Repealed. Laws 2011, LB 703, § 5.
50-1127.	Repealed. Laws 2011, LB 703, § 5.
50-1128.	Repealed. Laws 2011, LB 703, § 5.
50-1129.	Repealed. Laws 2011, LB 703, § 5.
50-1130.	Repealed. Laws 2011, LB 703, § 5.
50-1131.	Repealed. Laws 2011, LB 703, § 5.
50-1132.	Repealed. Laws 2011, LB 703, § 5.
50-1133.	Repealed. Laws 2011, LB 703, § 5.

## Section

- 50-1134. Repealed. Laws 2011, LB 703, § 5.  
50-1135. Repealed. Laws 2011, LB 703, § 5.  
50-1136. Repealed. Laws 2011, LB 703, § 5.  
50-1137. Repealed. Laws 2011, LB 703, § 5.  
50-1138. Repealed. Laws 2011, LB 703, § 5.  
50-1139. Repealed. Laws 2011, LB 703, § 5.  
50-1140. Repealed. Laws 2011, LB 703, § 5.  
50-1141.01. Repealed. Laws 2011, LB 703, § 5.  
50-1142. Repealed. Laws 2011, LB 703, § 5.  
50-1143. Repealed. Laws 2011, LB 703, § 5.  
50-1144. Repealed. Laws 2011, LB 703, § 5.  
50-1145. Repealed. Laws 2011, LB 703, § 5.  
50-1146. Repealed. Laws 2011, LB 703, § 5.  
50-1147. Repealed. Laws 2011, LB 703, § 5.  
50-1148. Repealed. Laws 2011, LB 703, § 5.  
50-1149. Repealed. Laws 2011, LB 703, § 5.  
50-1150. Repealed. Laws 2011, LB 703, § 5.  
50-1152. Transferred to section 50-1154.  
50-1153. Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.  
50-1154. Legislative districts; change; when operative.

**50-1101 Transferred to section 50-1153.**

**50-1102 Repealed. Laws 2011, LB 703, § 5.**

**50-1103 Repealed. Laws 2011, LB 703, § 5.**

**50-1104 Repealed. Laws 2011, LB 703, § 5.**

**50-1105 Repealed. Laws 2011, LB 703, § 5.**

**50-1106 Repealed. Laws 2011, LB 703, § 5.**

**50-1107 Repealed. Laws 2011, LB 703, § 5.**

**50-1108 Repealed. Laws 2011, LB 703, § 5.**

**50-1109 Repealed. Laws 2011, LB 703, § 5.**

**50-1110 Repealed. Laws 2011, LB 703, § 5.**

**50-1111 Repealed. Laws 2011, LB 703, § 5.**

**50-1112 Repealed. Laws 2011, LB 703, § 5.**

**50-1113 Repealed. Laws 2011, LB 703, § 5.**

**50-1114 Repealed. Laws 2011, LB 703, § 5.**

**50-1115 Repealed. Laws 2011, LB 703, § 5.**

**50-1116 Repealed. Laws 2011, LB 703, § 5.**

**50-1117 Repealed. Laws 2011, LB 703, § 5.**

**50-1118 Repealed. Laws 2011, LB 703, § 5.**

**50-1119.01 Repealed. Laws 2011, LB 703, § 5.**

- 50-1120 Repealed. Laws 2011, LB 703, § 5.
- 50-1121 Repealed. Laws 2011, LB 703, § 5.
- 50-1122 Repealed. Laws 2011, LB 703, § 5.
- 50-1123 Repealed. Laws 2011, LB 703, § 5.
- 50-1124 Repealed. Laws 2011, LB 703, § 5.
- 50-1125 Repealed. Laws 2011, LB 703, § 5.
- 50-1126 Repealed. Laws 2011, LB 703, § 5.
- 50-1127 Repealed. Laws 2011, LB 703, § 5.
- 50-1128 Repealed. Laws 2011, LB 703, § 5.
- 50-1129 Repealed. Laws 2011, LB 703, § 5.
- 50-1130 Repealed. Laws 2011, LB 703, § 5.
- 50-1131 Repealed. Laws 2011, LB 703, § 5.
- 50-1132 Repealed. Laws 2011, LB 703, § 5.
- 50-1133 Repealed. Laws 2011, LB 703, § 5.
- 50-1134 Repealed. Laws 2011, LB 703, § 5.
- 50-1135 Repealed. Laws 2011, LB 703, § 5.
- 50-1136 Repealed. Laws 2011, LB 703, § 5.
- 50-1137 Repealed. Laws 2011, LB 703, § 5.
- 50-1138 Repealed. Laws 2011, LB 703, § 5.
- 50-1139 Repealed. Laws 2011, LB 703, § 5.
- 50-1140 Repealed. Laws 2011, LB 703, § 5.
- 50-1141.01 Repealed. Laws 2011, LB 703, § 5.
- 50-1142 Repealed. Laws 2011, LB 703, § 5.
- 50-1143 Repealed. Laws 2011, LB 703, § 5.
- 50-1144 Repealed. Laws 2011, LB 703, § 5.
- 50-1145 Repealed. Laws 2011, LB 703, § 5.
- 50-1146 Repealed. Laws 2011, LB 703, § 5.
- 50-1147 Repealed. Laws 2011, LB 703, § 5.
- 50-1148 Repealed. Laws 2011, LB 703, § 5.
- 50-1149 Repealed. Laws 2011, LB 703, § 5.

**50-1150 Repealed. Laws 2011, LB 703, § 5.**

**50-1152 Transferred to section 50-1154.**

**50-1153 Legislative districts; division; population figures and maps; basis; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.**

(1) The State of Nebraska is hereby divided into forty-nine legislative districts. Each district shall be entitled to one member in the Legislature. 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.

(2) The numbers and boundaries of the legislative districts are designated and established by maps identified and labeled as maps LEG11-1, LEG11-1A, LEG11-43002E-2, LEG11-43002E-2A, LEG11-2B, LEG11-3, LEG11-4, LEG11-5, LEG11-6, LEG11-7, LEG11-8, LEG11-9, LEG11-10, LEG11-11, LEG11-12, LEG11-13, LEG11-14, LEG11-15, LEG11-16, LEG11-17, LEG11-18, LEG11-19, LEG11-20, LEG11-21, LEG11-21A, LEG11-22, LEG11-23, LEG11-24, LEG11-25, LEG11-25A, LEG11-26, LEG11-27, LEG11-28, LEG11-29, LEG11-30, LEG11-30A, LEG11-31, LEG11-32, LEG11-32A, LEG11-33, LEG11-34, LEG11-34A, LEG11-35, LEG11-36, LEG11-37, LEG11-37A, LEG11-38, LEG11-38A, LEG11-39, LEG11-40, LEG11-41, LEG11-42, LEG11-43002E-43, LEG11-44, LEG11-45, LEG11-46, LEG11-43002E-47, LEG11-48, and LEG11-43002E-49, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB703.

(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 legislative 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 legislative 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 legislative districts.

**Source:** Laws 1981, LB 406, § 1; R.S.1943, (1987), § 5-201; Laws 1991, LB 614, § 1; Laws 1992, Second Spec. Sess., LB 7, § 1; Laws 2001, LB 852, § 1; R.S.1943, (2010), § 50-1101; Laws 2011, LB703, § 2.

**50-1154 Legislative districts; change; when operative.**

The changes made to this section and section 50-1153 by Laws 2011, LB703 shall become operative on May 27, 2011, except that members of the Legislature from the odd-numbered districts shall be nominated at the primary election in 2012 and elected at the general election in November 2012 for the term commencing January 9, 2013. The members of the Legislature elected or appointed prior to May 27, 2011, shall represent the newly established districts

for the balance of their terms, with each member representing the same numbered district as prior to May 27, 2011.

**Source:** Laws 1981, LB 406, § 52; R.S.1943, (1987), § 5-252; Laws 1991, LB 614, § 52; Laws 1992, LB 946, § 1; Laws 1992, Second Spec. Sess., LB 7, § 7; Laws 1992, Second Spec. Sess., LB 15, § 3; Laws 2001, LB 852, § 51; R.S.1943, (2010), § 50-1152; Laws 2011, LB703, § 3.

## ARTICLE 12

### LEGISLATIVE PERFORMANCE AUDIT ACT

#### Section

- 50-1202. Legislative findings and declarations; purpose of act.  
 50-1203. Terms, defined.  
 50-1204. Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.  
 50-1205. Committee; duties.  
 50-1205.01. Performance audits; standards.  
 50-1206. Performance audits; tax incentive performance audit; how initiated; procedure.  
 50-1208. Performance audit; committee; duties; office; duties.  
 50-1209. Tax incentive performance audits; schedule; contents.  
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 50-1212. Written implementation plan; duties.  
 50-1213. Office; access to information and records; agency duties; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.  
 50-1214. Names not included in documents, when; state employee; how treated; prohibited act; violation; penalty.  
 50-1215. Violations; penalty.

#### **50-1202 Legislative findings and declarations; purpose of act.**

(1) The Legislature hereby finds and declares that pursuant to section 50-402 it is the duty of the Legislative Council to do independent assessments of the performance of state government organizations, programs, activities, and functions in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action.

(2) The purpose of the Legislative Performance Audit Act is to provide for a system of performance audits to be conducted by the office of Legislative Audit as directed by the Legislative Performance Audit Committee.

(3) It is not the purpose of the act to interfere with the duties of the Public Counsel or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogative of any executive state officer, agency, board, bureau, commission, association, society, or institution, except that the act shall not be construed to preclude a performance audit of an agency on the basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogative of the Governor to monitor and report on the performance of the agencies, boards, bureaus, commissions, associations, societies, and institutions under his or her administrative direction.

**Source:** Laws 1992, LB 988, § 2; Laws 2003, LB 607, § 4; Laws 2013, LB39, § 2.



**50-1203 Terms, defined.**

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, including the Office of Probation Administration and the Office of Public Guardian, but does not include (a) any court, (b) the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Office means the office of Legislative Audit;

(9) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(10) Preaudit inquiry means an investigatory process during which the office gathers and examines evidence to determine if a performance audit topic has merit;

(11) Tax incentive performance audit means an evaluation of a tax incentive program pursuant to section 50-1209; and

(12) Working papers means those documents containing evidence to support the office's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the office during the performance audit or preaudit inquiry.

**Source:** Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3; Laws 2013, LB39, § 3; Laws 2015, LB538, § 1; Laws 2016, LB1016, § 1.

Operative date January 1, 2017.

**50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.**

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed of the Speaker of the Legislature, the chairperson of the Executive

Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. For purposes of tax incentive performance audits authorized in section 50-1209, the committee shall include as nonvoting members the chairperson of the Revenue Committee of the Legislature or his or her designee and one other member of the Revenue Committee, as selected by the Revenue Committee. The Legislative Performance Audit Committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Auditor shall ensure that performance audit work conducted by the office conforms with performance audit standards contained in the Government Auditing Standards (2011 Revision) as required in section 50-1205.01. The office shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The office shall be the custodian of all records generated by the committee or office except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The office shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The office shall operate under the general direction of the committee.

**Source:** Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1; Laws 2013, LB39, § 4; Laws 2013, LB40, § 1; Laws 2015, LB538, § 2.

#### **50-1205 Committee; duties.**

The committee shall:

(1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;

(2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;

(3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;

(4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;

(5) Respond to inquiries regarding performance audits;

(6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;

(7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;

(8) Administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the

state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the office, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it electronically to the Clerk of the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the office and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the office, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the office during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

**Source:** Laws 1992, LB 988, § 5; Laws 2003, LB 607, § 7; Laws 2006, LB 588, § 3; Laws 2006, LB 956, § 5; Laws 2012, LB782, § 78; Laws 2013, LB39, § 5; Laws 2013, LB222, § 19.

#### **50-1205.01 Performance audits; standards.**

Performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2011 Revision), published by the Comptroller General of the United States, Government Accountability Office.

**Source:** Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2; Laws 2013, LB40, § 2.

#### **50-1206 Performance audits; tax incentive performance audit; how initiated; procedure.**

(1) Requests for performance audits may be made by the Governor, any other constitutional officer of the State of Nebraska, a legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or the Director of Research of the Legislature.

(2) Performance audit requests shall be submitted to the committee chairperson or Legislative Auditor by letter or on a form developed by the Legislative Auditor.

(3) When considering a performance audit request, if the committee determines that the request has potential merit but insufficient information is available, it may, by majority vote, instruct the Legislative Auditor to conduct a preaudit inquiry.

(4) Upon completion of the preaudit inquiry, the committee chairperson shall place the request on the agenda for the committee's next meeting and shall notify the request sponsor of that action.

(5) Tax incentive performance audits shall be initiated as provided in section 50-1209.

**Source:** Laws 1992, LB 988, § 6; Laws 2003, LB 607, § 9; Laws 2006, LB 956, § 6; Laws 2008, LB822, § 3; Laws 2015, LB538, § 3.

**50-1208 Performance audit; committee; duties; office; duties.**

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the office begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the office shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the office.

(4) After the entrance conference, the office shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit. The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the office.

(5) Once the committee has adopted a scope statement, the office shall develop an audit plan. The audit plan shall include a description of the research and audit methodologies to be employed and a projected deadline for completion of the office's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval. Upon approval of the audit plan, the agency shall be notified in writing of the specific scope of the audit and the projected deadline for completion of the office's report. If the office needs information from a political subdivision or entity thereof to effectively conduct a performance audit of an agency, the political subdivision or entity thereof shall provide information, on request, to the office.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or

audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

**Source:** Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8; Laws 2013, LB39, § 6; Laws 2015, LB538, § 4.

**50-1209 Tax incentive performance audits; schedule; contents.**

(1) Tax incentive performance audits shall be conducted by the office pursuant to this section on the following tax incentive programs:

- (a) The Angel Investment Tax Credit Act;
- (b) The Beginning Farmer Tax Credit Act;
- (c) The Nebraska Advantage Act;
- (d) The Nebraska Advantage Microenterprise Tax Credit Act;
- (e) The Nebraska Advantage Research and Development Act;
- (f) The Nebraska Advantage Rural Development Act;
- (g) The Nebraska Job Creation and Mainstreet Revitalization Act;
- (h) The New Markets Job Growth Investment Act; and

(i) Any other tax incentive program created by the Legislature for the purpose of recruitment or retention of businesses in Nebraska. In determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider legislative intent, including legislative statements of purpose and goals, and may also consider whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agency.

(2) The office shall develop a schedule for conducting tax incentive performance audits and shall update the schedule annually. The schedule shall ensure that each tax incentive program is reviewed at least once every three years.

(3) Each tax incentive performance audit conducted by the office pursuant to this section shall include the following:

(a) An analysis of whether the tax incentive program is meeting the following goals:

(i) Strengthening the state's economy overall by attracting new business to the state, expanding existing businesses, increasing employment, creating high-quality jobs, and increasing business investment;

(ii) Revitalizing rural and other distressed areas of the state;

(iii) Diversifying the state's economy and positioning Nebraska for the future by stimulating entrepreneurial, high-tech, and renewable energy firms; and

(iv) Any other program-specific goals found in the statutes for the tax incentive program being evaluated;

(b) An analysis of the economic and fiscal impacts of the tax incentive program. The analysis may take into account the following considerations in addition to other relevant factors:

(i) The extent to which the tax incentive changes business behavior;

(ii) The results of the tax incentive for the economy of Nebraska as a whole. This consideration includes both direct and indirect impacts generally and any effects on other Nebraska businesses; and

(iii) A comparison to the results of other economic development strategies with similar goals, other policies, or other incentives;

(c) An assessment of whether adequate protections are in place to ensure the fiscal impact of the tax incentive does not increase substantially beyond the state's expectations in future years;

(d) An assessment of the fiscal impact of the tax incentive on the budgets of local governments, if applicable; and

(e) Recommendations for any changes to statutes or rules and regulations that would allow the tax incentive program to be more easily evaluated in the future, including changes to data collection, reporting, sharing of information, and clarification of goals.

**Source:** Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12; Laws 2013, LB39, § 7; Laws 2015, LB538, § 5.

#### Cross References

Angel Investment Tax Credit Act, see section 77-6301.

Beginning Farmer Tax Credit Act, see section 77-5201.

Nebraska Advantage Act, see section 77-5701.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

### **50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.**

(1) Upon completion of a performance audit, the office shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the office's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The committee may, by majority vote, release the office's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the office's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the office's report or recommendations.

**Source:** Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9; Laws 2012, LB782, § 79; Laws 2013, LB39, § 8; Laws 2015, LB538, § 6.

### **50-1211 Committee; review materials; reports; public hearing; procedure.**



(1) The committee shall review the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the office's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the office's report, the agency's response, the Legislative Auditor's summary of the agency's response, and any opinions of the Legislative Fiscal Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the committee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the Legislature and to the public. The report submitted to the members of the Legislature shall be submitted electronically. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report. Each tax incentive performance audit report shall also be presented at a joint hearing of the Appropriations Committee and Revenue Committee of the Legislature.

**Source:** Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10; Laws 2012, LB782, § 80; Laws 2013, LB39, § 9; Laws 2015, LB538, § 7.

#### **50-1212 Written implementation plan; duties.**

(1) Within forty business days following the release of the committee report, the agency shall provide to the committee a written implementation plan describing the action planned and timeframe for accomplishment of each of the recommendations contained in the committee report, except that the committee may waive such requirement for tax incentive performance audits.

(2) The agency director shall make every effort to fully implement the recommendations that can be implemented within the limits of the agency's current appropriation. For those recommendations which require additional appropriations or the drafting of legislation, the committee shall work with the appropriate standing committee of the Legislature to ensure legislation is introduced.

(3) The Legislative Performance Audit Committee shall establish a system to ascertain and monitor agency conformity to the recommendations contained in the committee report and compliance with any statutory changes resulting from the report recommendations.

(4) Based on the tax incentive performance audit report, the Revenue Committee of the Legislature shall electronically report its recommendation about whether to extend the sunset date for the audited program to the Legislature by December 1 of the year prior to such program's sunset date.

**Source:** Laws 1992, LB 988, § 12; Laws 2003, LB 607, § 15; Laws 2015, LB538, § 8; Laws 2016, LB1022, § 1.  
Effective date April 19, 2016.

**50-1213 Office; access to information and records; agency duties; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.**

(1) The office shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, including, but not limited to, direct access to all agency data bases containing relevant program information or data, unless the office is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the office access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Upon receipt of a written request by the office for access to any information or records, the agency shall provide to the office as soon as is practicable and without delay, but not more than three business days after actual receipt of the request, either (a) the requested materials or (b)(i) if there is a legal basis for refusal to comply with the request, a written denial of the request together with the information specified in subsection (1) of this section or (ii) if the entire request cannot with reasonable good faith efforts be fulfilled within three business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, and an opportunity for the office to modify or prioritize the items within the request. No delay due to the significant difficulty or the extensiveness of a request for access to information or records shall exceed three calendar weeks after actual receipt of such request by any agency. The three business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

(3) Except as provided in this section, any confidential information or confidential records shared with the office shall remain confidential and shall not be shared by an employee of the office with any person who is not an employee of the office, including any member of the committee.

(4) Except as provided in subsection (11) of section 77-2711 and subdivision (10)(d) of section 77-27,119, if any employee or former employee of the office knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(5) No proceeding of the committee or opinion or expression of any member of the committee or office employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or office employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the office except in a proceeding brought to enforce the Legislative Performance Audit Act.

(6) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or office shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the office.

**Source:** Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5; Laws 2013, LB39, § 10; Laws 2015, LB539, § 3; Laws 2016, LB1022, § 2.  
Effective date April 19, 2016.

**50-1214 Names not included in documents, when; state employee; how treated; prohibited act; violation; penalty.**

(1) By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the office or committee.

(2) No employee of the State of Nebraska who provides information to the committee or office shall be subject to any personnel action, as defined in section 81-2703, in connection with his or her employment as a result of the provision of such information.

(3) Any person exercising his or her supervisory or managerial authority to recommend, approve, direct, or otherwise take or affect personnel action in violation of subsection (2) of this section shall be guilty of a Class III misdemeanor and shall be subject to personnel action up to and including dismissal from employment with the state.

**Source:** Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6; Laws 2013, LB39, § 11; Laws 2015, LB539, § 4.

**50-1215 Violations; penalty.**

Any person who willfully fails to comply with the provisions of section 50-1213 or who otherwise willfully obstructs or hinders the conduct of a performance audit or preaudit inquiry or who willfully misleads or attempts to

mislead any person charged with the duty of conducting a performance audit or preaudit inquiry shall be guilty of a Class II misdemeanor.

**Source:** Laws 1992, LB 988, § 15; Laws 2003, LB 607, § 18; Laws 2006, LB 588, § 7; Laws 2015, LB539, § 5.

### ARTICLE 13

#### REVIEW OF BOARDS AND COMMISSIONS

Section

50-1302. Government, Military and Veterans Affairs Committee; report.

##### **50-1302 Government, Military and Veterans Affairs Committee; report.**

(1) Every four years, beginning in 2008, the Government, Military and Veterans Affairs Committee of the Legislature shall prepare and publish a report pertaining to boards, commissions, and similar entities created by law that are made part of or are placed in the executive branch of state government. The committee may also include entities created by executive order or by an agency director. The report shall be submitted electronically to the Legislature on December 1 of such year.

(2) The report shall include, but not be limited to, the following:

(a) The name of each board, commission, or similar entity;

(b) The name of a parent agency, if any;

(c) The statutory citation or other authorization for the creation of the board, commission, or entity;

(d) The number of members of the board, commission, or entity and how the members are appointed;

(e) The qualifications for membership on the board, commission, or entity;

(f) The number of times the board, commission, or entity is required to meet during the year and the number of times it actually met;

(g) Budget information of the board, commission, or entity for the four most recently completed fiscal years; and

(h) A brief summary of the accomplishments of the board, commission, or entity for the past four years.

**Source:** Laws 1999, LB 298, § 2; Laws 2002, LB 93, § 4; Laws 2005, LB 241, § 1; Laws 2012, LB782, § 81.

## CHAPTER 51

### LIBRARIES AND MUSEUMS

Article.

2. Public Libraries. 51-211.

#### ARTICLE 2

#### PUBLIC LIBRARIES

Section

51-211. Library board; general powers and duties; governing body; duty; discrimination prohibited.

**51-211 Library board; general powers and duties; governing body; duty; discrimination prohibited.**

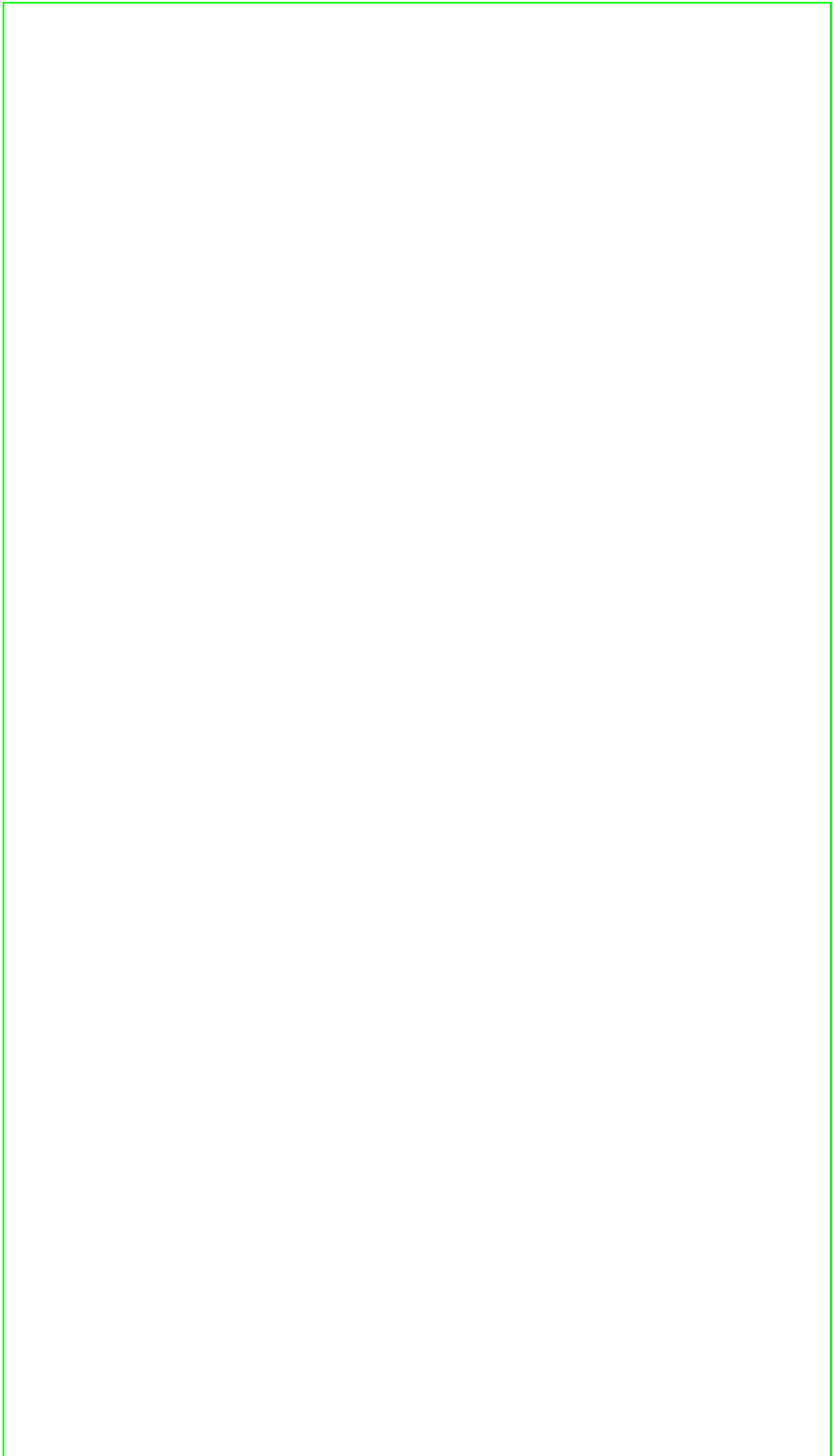
(1) The library board may erect, lease, or occupy an appropriate building for the use of a library, appoint a suitable librarian and assistants, fix the compensation of such appointees, and remove such appointees at the pleasure of the board. The governing body of the county, city, or village in which the library is located shall approve any personnel administrative or compensation policy or procedure before implementation of such policy or procedure by the library board.

(2) The library board may establish rules and regulations for the government of such library as may be deemed necessary for its preservation and to maintain its usefulness and efficiency. The library board may fix and impose, by general rules, penalties and forfeitures for trespasses upon or injury to the library grounds, rooms, books, or other property, for failure to return any book, or for violation of any bylaw, rule, or regulation and fix and impose reasonable fees, not to exceed the library's actual cost, for nonbasic services. The board shall have and exercise such power as may be necessary to carry out the spirit and intent of sections 51-201 to 51-219 in establishing and maintaining a public library and reading room.

(3) The public library shall make its basic services available without charge to all residents of the political subdivision which supplies its tax support.

(4) No service shall be denied to any person because of race, sex, religion, age, color, national origin, ancestry, physical handicap, or marital status.

**Source:** Laws 1911, c. 73, § 6, p. 316; R.S.1913, § 3797; Laws 1917, c. 86, § 1, p. 223; C.S.1922, § 3190; C.S.1929, § 51-206; R.S.1943, § 51-211; Laws 1990, LB 1236, § 2; Laws 1997, LB 250, § 2; Laws 2012, LB470, § 2.





## CHAPTER 52

### LIENS

Article.

1. Construction Lien.  
(b) Nebraska Construction Lien Act. 52-158.
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#### ARTICLE 1

#### CONSTRUCTION LIEN

##### (b) NEBRASKA CONSTRUCTION LIEN ACT

Section

52-158. Repealed. Laws 2011, LB 3, § 1.

##### (b) NEBRASKA CONSTRUCTION LIEN ACT

**52-158 Repealed. Laws 2011, LB 3, § 1.**

#### ARTICLE 2

#### ARTISAN'S LIEN

Section

52-203. Lien; effect; priority; limitation; enforcement; fee.

52-204. Lien satisfied; financing statement; termination.

**52-203 Lien; effect; priority; limitation; enforcement; fee.**

A lien created under section 52-202 is in force from and after the date it is filed and is prior and paramount to all other liens upon such property except those previously filed against such property. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement proceedings shall be instituted within one year after the filing of such lien. The lien is subject to the rights of purchasers of the property against which the lien is filed when the purchasers acquired the property prior to the filing of the lien without knowledge or notice of the rights

of the persons performing the work or furnishing material. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-202 regardless of when the lien was created.

**Source:** Laws 1913, c. 123, § 3, p. 311; R.S.1913, § 3843; C.S.1922, § 3227; C.S.1929, § 52-203; R.S.1943, § 52-203; Laws 1969, c. 436, § 1, p. 1463; Laws 1984, LB 808, § 1; Laws 1998, LB 1321, § 80; Laws 1999, LB 550, § 11; Laws 2001, LB 54, § 2; Laws 2014, LB750, § 2.

**52-204 Lien satisfied; financing statement; termination.**

When a lien created under section 52-202 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1988, LB 943, § 2; Laws 1999, LB 550, § 12; Laws 2001, LB 54, § 3; Laws 2014, LB750, § 3.

**ARTICLE 5**

**THRESHER'S LIEN**

Section

- 52-501. Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.  
52-504. Lien satisfied; financing statement; termination.

**52-501 Thresher's, combiner's, cornsheller's, or mechanical cornpicker's lien; perfection; financing statement; filing; enforcement; fee.**

(1)(a) The owner or operator of any threshing machine or combine used in threshing, combining, or hulling grain or seed, (b) the owner or operator of any mechanical cornpicker or mechanical cornhusker used in picking or husking corn, and (c) the owner or operator of any cornsheller used in shelling corn shall have and hold a lien upon such grain, seed, or corn which he or she shall thresh, combine, hull, pick, husk, or shell with such machine to secure the payment to him or her of the charges agreed upon by the person for whom the threshing, combining, hulling, picking, husking, or shelling was done or, if no charges are agreed upon, for such charges as may be reasonable for such threshing, combining, hulling, picking, husking, or shelling.

(2) A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the owner or operator claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person for whom the threshing, combining, hulling, picking, husking, or shelling was done, (c) the amount due for such threshing, combining, hulling, picking, husking, or shelling, (d) the amount of grain, seed, or corn covered by the lien, (e) the place where the grain, seed, or corn is located, and (f) the date on which the threshing, combining, hulling, picking, husking, or shelling was done. Such financing statement shall be filed within thirty days after the threshing, combining, hulling, picking, husking, or shelling was done. The failure to include the social security number or federal tax identification number shall not render any

filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person for whom the threshing, combining, hulling, picking, husking, or shelling was done.

(3) In the event the person for whom the threshing, combining, hulling, picking, husking, or shelling was done desires to sell or deliver the grain, seed, or corn so threshed, combined, hulled, picked, husked, or shelled to a grain elevator or to any other person, such person desiring to sell or deliver the grain, seed, or corn shall notify the consignee or purchaser that the threshing, combining, hulling, picking, husking, or shelling bill has not been paid, and the lien created under this section on such grain, seed, or corn shall shift to the purchase price thereof in the hands of the purchaser or consignee. In the event the grain, seed, or corn is sold or consigned with the consent or knowledge of the person entitled to a lien created under this section within thirty days after the date of such threshing, combining, hulling, picking, husking, or shelling, such lien shall not attach to the grain, seed, or corn or to the purchase price thereof unless the person entitled to the lien notifies the purchaser in writing of the lien.

(4) A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code, except that such enforcement shall be instituted within thirty days after the filing of the lien. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(5) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Laws 1923, c. 117, § 1, p. 278; C.S.1929, § 52-501; Laws 1939, c. 83, § 1, p. 266; C.S.Supp.,1941, § 52-501; R.S.1943, § 52-501; Laws 1945, c. 126, § 1, p. 406; Laws 1961, c. 257, § 5, p. 755; Laws 1965, c. 317, § 1, p. 883; Laws 1969, c. 436, § 3, p. 1463; Laws 1984, LB 808, § 2; Laws 1988, LB 943, § 3; Laws 1998, LB 1321, § 81; Laws 1999, LB 550, § 14; Laws 2001, LB 54, § 4; Laws 2014, LB750, § 4.

#### **52-504 Lien satisfied; financing statement; termination.**

When a lien created under section 52-501 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 11; Laws 1988, LB 943, § 4; Laws 1999, LB 550, § 15; Laws 2001, LB 54, § 6; Laws 2014, LB750, § 5.

### **ARTICLE 6**

#### **LIEN FOR SERVICES PERFORMED UPON PERSONAL PROPERTY**

Section

52-603. Lien; how satisfied; sale.

52-604. Sale; proceeds; distribution.

#### **52-603 Lien; how satisfied; sale.**

In accordance with the terms of the notice given as provided by section 52-601.01, a sale of the goods for reasonable value may be had to satisfy any

valid claim of the claimant for which the claimant has a lien on the goods. Such sale shall extinguish any lien or security interest in the goods of a lienholder or security interest holder to which notice of sale was mailed pursuant to section 52-601.01.

**Source:** Laws 1923, c. 118, § 3, p. 281; C.S.1929, § 52-603; R.S.1943, § 52-603; Laws 1974, LB 960, § 2; Laws 2014, LB851, § 2.

**52-604 Sale; proceeds; distribution.**

From the proceeds of such sale the claimant shall make application in the following order: (1) To satisfy his or her lien, including the reasonable charges of notice, advertisement, and sale; and (2) to satisfy the obligations secured by the lien or security interest of any lienholder or security interest holder of record. The balance, if any, of such proceeds shall be delivered to the county treasurer of the county in which the sale was made. The treasurer of the county in which the property was sold shall issue his or her receipt for the balance of such proceeds. The county treasurer shall make proper entry in the books of his or her office of all such proceeds paid over to him or her, and shall hold the money for a period of five years, and immediately thereafter pay the same into the school fund of the proper county, to be appropriated for the support of the schools, unless the owner of the property sold, his or her legal representatives, or any lienholder or security interest holder of record whose lien or security interest has not previously been satisfied shall, within such period of five years after such proceeds have been deposited with the treasurer, furnish satisfactory evidence of the ownership of such property or satisfactory evidence of the lien or security interest, in which event he, she, or they shall be entitled to receive from the county treasurer the amount so deposited with him or her.

**Source:** Laws 1923, c. 118, § 4, p. 281; C.S.1929, § 52-604; R.S.1943, § 52-604; Laws 1974, LB 960, § 3; Laws 2005, LB 82, § 1; Laws 2014, LB851, § 3.

**ARTICLE 7**

**VETERINARIAN'S LIEN**

Section

52-701. Lien; perfection; financing statement; filing; enforcement; fee.

52-702. Lien satisfied; financing statement; termination.

**52-701 Lien; perfection; financing statement; filing; enforcement; fee.**

Whenever any person procures, contracts with, or hires any person licensed to practice veterinary medicine and surgery to treat, relieve, or in any way take care of any kind of livestock, such veterinarian shall have a first, paramount, and prior lien upon such livestock so treated for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of the services and any medicines or biologics furnished. A lien created under this section shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed within ninety days after the furnishing of the services and any medicines or biologics and shall contain or

have attached thereto (1) the name and address and the social security number or federal tax identification number of the veterinarian claiming the lien, (2) the name and address and the social security number or federal tax identification number, if known, of the person to whom the services and medicines or biologics were furnished, (3) a correct description of the livestock to be charged with the lien, and (4) the amount of the services and any medicines or biologics furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person to whom the services and medicines or biologics were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Laws 1935, c. 117, § 1, p. 432; C.S.Supp.,1941, § 52-701; R.S. 1943, § 52-701; Laws 1969, c. 436, § 4, p. 1465; Laws 1984, LB 808, § 3; Laws 1988, LB 943, § 5; Laws 1998, LB 1321, § 82; Laws 1999, LB 550, § 16; Laws 2001, LB 54, § 7; Laws 2014, LB750, § 6.

#### **52-702 Lien satisfied; financing statement; termination.**

When a lien created under section 52-701 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 12; Laws 1988, LB 943, § 6; Laws 1999, LB 550, § 17; Laws 2001, LB 54, § 8; Laws 2014, LB750, § 7.

### **ARTICLE 9**

#### **PETROLEUM PRODUCTS LIEN**

Section

52-903. Lien; effect of filing; sale of crop, effect; enforcement.

52-905. Lien satisfied; financing statement; termination.

#### **52-903 Lien; effect of filing; sale of crop, effect; enforcement.**

From and after the date of the filing of the lien as provided in section 52-902, the person claiming the lien shall have a lien upon the crops produced and owned by the person to whom the fuel or lubricant was furnished to the amount of the purchase price of such fuel or lubricant so furnished to such person. In the event the person to whom such fuel or lubricant was furnished desires to sell or deliver any portion of the crops so produced, such person shall notify the purchaser or consignee that such fuel or lubricant bill has not been paid. Such lien shall shift to the purchase price thereof in the hands of such purchaser or consignee. In the event any portion of such crops is sold or consigned with the consent or knowledge of the person entitled to a lien thereon within six months after the date such fuel or lubricant was furnished, such lien shall not attach to any portion of such crops or to the purchase price thereof unless the person entitled to such lien notifies the purchaser in writing thereof. A lien created under section 52-901 shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code,

except that such enforcement proceedings shall be instituted within ninety days after the filing of the lien. Effective January 1, 2015, this section applies to a lien created under section 52-901 regardless of when the lien was created.

**Source:** Laws 1957, c. 226, § 3, p. 776; Laws 1969, c. 436, § 5, p. 1465; Laws 1987, LB 314, § 1; Laws 1999, LB 550, § 19; Laws 2001, LB 54, § 11; Laws 2014, LB750, § 8.

**52-905 Lien satisfied; financing statement; termination.**

When a lien created under section 52-901 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 13; Laws 1988, LB 943, § 8; Laws 1999, LB 550, § 20; Laws 2001, LB 54, § 13; Laws 2014, LB750, § 9.

**ARTICLE 10**

**UNIFORM FEDERAL LIEN REGISTRATION ACT**

Section

52-1004. Notice; filing; fees; billing.

**52-1004 Notice; filing; fees; billing.**

(1)(a) This subdivision applies until January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration 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 subsection (1) of section 52-1001 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 subsection (1) of section 52-1001.

(b) This subdivision applies on and after January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration 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 subsection (1) of section 52-1001 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 subsection (1) of section 52-1001.



(2) The Secretary of State shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents presented or filed by them.

**Source:** Laws 1969, c. 433, § 4, p. 1458; Laws 1984, LB 808, § 5; Laws 1988, LB 933, § 6; Laws 1998, LB 1321, § 86; Laws 1999, LB 550, § 23; Laws 2012, LB14, § 5.

## ARTICLE 11

### FERTILIZER AND AGRICULTURAL CHEMICAL LIENS

#### Section

52-1103. Lien; time for filing; date of attachment; enforcement.

52-1104. Lien satisfied; financing statement; termination.

#### **52-1103 Lien; time for filing; date of attachment; enforcement.**

In order to be valid against subsequent lienholders, any lien created under section 52-1101 shall be filed within sixty days after the last date upon which the product, machinery, or equipment was furnished or work or labor was performed under the contract, but in no event shall it have priority over prior lienholders unless prior lienholders have agreed to the contract in writing. Such lien shall attach as of the date of filing. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-1101 regardless of when the lien was created.

**Source:** Laws 1977, LB 218, § 3; Laws 1999, LB 550, § 27; Laws 2001, LB 54, § 16; Laws 2014, LB750, § 10.

#### **52-1104 Lien satisfied; financing statement; termination.**

When a lien created under section 52-1101 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 15; Laws 1988, LB 943, § 10; Laws 1999, LB 550, § 28; Laws 2001, LB 54, § 17; Laws 2014, LB750, § 11.

## ARTICLE 12

### SEED OR ELECTRICAL POWER AND ENERGY LIENS

#### Section

52-1203. Lien; date of attachment; enforcement.

52-1205. Lien satisfied; financing statement; termination.

#### **52-1203 Lien; date of attachment; enforcement.**

A lien created under section 52-1201 shall attach on the date of filing and time thereof if shown. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-1201 regardless of when the lien was created.

**Source:** Laws 1985, LB 503, § 3; Laws 1999, LB 550, § 30; Laws 2001, LB 54, § 20; Laws 2014, LB750, § 12.

**52-1205 Lien satisfied; financing statement; termination.**

When a lien created under section 52-1201 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1988, LB 943, § 12; Laws 1999, LB 550, § 31; Laws 2001, LB 54, § 22; Laws 2014, LB750, § 13.

**ARTICLE 13****FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS**

## Section

52-1307.	Effective financing statement, defined.
52-1308.	Farm product, defined.
52-1312.	Central filing system; Secretary of State; duties; system requirements; fees.
52-1313.01.	Effective financing statements; electronic access; fees.
52-1317.	Verification of security interest; seller; duty.
52-1318.	Rules and regulations; federal provisions adopted; Secretary of State; duties.

**52-1307 Effective financing statement, defined.**

Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is filed by the secured party in the office of the Secretary of State;
- (3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;
- (4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the approved unique identifier of the debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;
- (5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;
- (6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refileing or filing a continuation statement within six months before the expiration of the five-year period;
- (7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;
- (8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.

An effective financing statement properly filed with a social security number or an Internal Revenue Service taxpayer identification number shall maintain its effectiveness regardless that such numbers are not required on such statement.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61; Laws 2015, LB464, § 1.

**52-1308 Farm product, defined.**

Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, llamas, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 8; Laws 2007, LB124, § 62; Laws 2016, LB1035, § 1.  
Effective date July 21, 2016.

**52-1312 Central filing system; Secretary of State; duties; system requirements; fees.**

The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor’s residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other digital copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the approved unique identifier of the debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's approved unique identifier. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive or obtain lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive or obtain. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive or obtain lists described in subdivision (3) of this section. For each farm product list, the fee shall be an amount determined by the Secretary of State not to exceed two hundred dollars per year.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received or obtained by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed or published by the Secretary of State not more often than once every month and not less often than once every three months as determined by the Secretary of State. The Secretary of State may provide for the distribution or publication of the lists on any medium and establish reasonable charges for such lists, not to exceed the charges provided for in subdivision (4) of this section.

The Secretary of State shall, by rule and regulation, establish the dates upon which the distributions or publications will be made, the dates after which a filing of an effective financing statement will not be reflected on the next distribution or publication of lists, and the dates by which a registrant must complete a registration to receive or obtain the next list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed or published by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63; Laws 2015, LB464, § 2; Laws 2016, LB1035, § 2.  
Effective date July 21, 2016.

**52-1313.01 Effective financing statements; electronic access; fees.**

(1) The record of effective financing statements maintained by the Secretary of State may be made available electronically through the portal established under section 84-1204. For batch requests, there shall be a fee of two dollars per requested effective financing statement record accessed through the portal, except that the fee for a batch request for one thousand or more effective financing statements shall be two thousand dollars. Effective financing statement data accessed through the portal shall be for informational purposes only and shall not provide the protection afforded a buyer registered pursuant to section 52-1312.

(2) All fees collected pursuant to this section 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 Secretary of State.

**Source:** Laws 1998, LB 924, § 23; Laws 2012, LB719, § 3.

**52-1317 Verification of security interest; seller; duty.**

In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's approved unique identifier.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67; Laws 2015, LB464, § 3.

**52-1318 Rules and regulations; federal provisions adopted; Secretary of State; duties.**

(1) The State of Nebraska hereby adopts the federal rules and regulations adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with

section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

**Source:** Laws 1986, Third Spec. Sess., LB 1, § 18; Laws 1998, LB 924, § 24; Laws 2003, LB 4, § 4; Laws 2007, LB124, § 68; Laws 2016, LB1035, § 3.

Effective date July 21, 2016.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**ARTICLE 14**

**AGRICULTURAL PRODUCTION LIENS**

**Section**

52-1407. Lien; perfection; financing statement; filing; priority; enforcement; fee.

52-1409. Lien satisfied; financing statement; termination.

**52-1407 Lien; perfection; financing statement; filing; priority; enforcement; fee.**

(1) An agricultural production input lien shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto the information required in subsection (2) of section 52-1402 and shall be filed within three months after the last date that the agricultural production input was furnished. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. Perfection occurs as of the date such financing statement is filed.

(2) An agricultural production input lien that is not perfected has the priority of an unperfected security interest under section 9-322, Uniform Commercial Code.

(3) An agricultural production input lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. For purposes of enforcement of the lien, the lienholder is the secured party and the person to whom the agricultural production input was furnished is the debtor, and each has the respective rights and duties of a secured party and a debtor under article 9, Uniform Commercial Code.

(4) The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(5) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Laws 1987, LB 101, § 7; Laws 1988, LB 943, § 16; Laws 1999, LB 550, § 32; Laws 2001, LB 54, § 23; Laws 2014, LB750, § 14.

**52-1409 Lien satisfied; financing statement; termination.**



When an agricultural production input lien is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1987, LB 101, § 9; Laws 1988, LB 943, § 17; Laws 1999, LB 550, § 33; Laws 2001, LB 54, § 24; Laws 2014, LB750, § 15.

## ARTICLE 16 MASTER LIEN LIST

### Section

- 52-1601. Master lien list; Secretary of State; compilation.  
 52-1602. Master lien list; distribution or publication; registration to receive or obtain list; fee.  
 52-1603. Buyer of farm products; purchase subject to lien; when; waiver or release of lien.

### **52-1601 Master lien list; Secretary of State; compilation.**

The Secretary of State shall compile lien information relative to liens created under Chapter 52, articles 2, 5, 7, 9, 11, 12, and 14, and Chapter 54, article 2, received by his or her office pursuant to subsection (a) of section 9-530, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.

**Source:** Laws 1988, LB 987, § 1; Laws 1999, LB 550, § 34; Laws 2002, LB 957, § 24; Laws 2016, LB1035, § 4.  
 Effective date July 21, 2016.

### **52-1602 Master lien list; distribution or publication; registration to receive or obtain list; fee.**

(1) The master lien list prescribed in section 52-1601 shall be distributed or published by the Secretary of State not more often than once every month and not less often than once every three months on the date corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed or published.

(2) Any person may register with the Secretary of State to receive or obtain the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. A registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive or obtain the master lien lists prescribed in section 52-1601. For each master lien list, the fee shall be an amount determined by the Secretary of State not to exceed two hundred dollars per year. The Secretary of State may provide for the distribution or publication of master lien lists on any

medium and may establish reasonable charges for such lists, not to exceed the charges provided for in this subsection.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next distribution or publication of the master lien list and the date by which a registrant shall complete a registration in order to receive or obtain the next master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

**Source:** Laws 1988, LB 987, § 2; Laws 1998, LB 924, § 25; Laws 2003, LB 4, § 5; Laws 2007, LB124, § 69; Laws 2016, LB1035, § 5.  
Effective date July 21, 2016.

**52-1603 Buyer of farm products; purchase subject to lien; when; waiver or release of lien.**

(1) A buyer of farm products who is registered to receive or obtain the master lien list as provided in section 52-1602 and who, in the ordinary course of business, buys farm products from a seller engaged in farming operations shall take free of any lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, if such lien is not on the most recent master lien list received or obtained by the buyer pursuant to sections 52-1601 to 52-1605, except that such buyer shall take subject to any such lien if the lien was filed after the last date for inclusion in the most recent distribution or publication of the master lien list and if the buyer has received from the lienholder or seller written notice of the lien. For purposes of this subsection, the form of such written notice of the lien may be a copy of the lien filing. For purposes of this subsection, received or obtained by the buyer shall mean the first date upon which delivery or publication of the master lien list is attempted by a carrier or, in the case of electronic publication, the first date upon which the Secretary of State made the most current master lien list available electronically, and in all cases a buyer shall be presumed to have received or obtained the master lien list ten days after it was mailed or published by the Secretary of State.

(2) If a buyer buying property subject to a lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and the lienholder of any such lien for such property and if such lienholder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the lien specified to the extent of the amount of the check or instrument. Such waiver or release of the lien shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

(3) Except as otherwise provided in the provisions of subsections (1) and (2) of this section, sections 52-1601 to 52-1605 shall not be interpreted or construed to alter liability of buyers of property subject to liens created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14.

**Source:** Laws 1988, LB 987, § 3; Laws 2003, LB 70, § 1; Laws 2016, LB1035, § 6.  
Effective date July 21, 2016.

## ARTICLE 19

## NONCONSENSUAL COMMON-LAW LIENS

## Section

- 52-1901. Nonconsensual common-law lien, defined.  
52-1902. Transferred to section 52-1907.  
52-1905. Nonconsensual common-law lien; how treated.  
52-1906. Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.  
52-1907. Submission for filing or recording; liability.

**52-1901 Nonconsensual common-law lien, defined.**

For purposes of sections 52-1901 to 52-1907, nonconsensual common-law lien means a document that purports to assert a lien against real or personal property of any person or entity and:

- (1) Is not expressly provided for by a specific state or federal statute;
- (2) Does not depend on the consent of the owner of the real or personal property affected; and
- (3) Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

**Source:** Laws 2003, LB 655, § 1; Laws 2013, LB3, § 3.

**52-1902 Transferred to section 52-1907****52-1905 Nonconsensual common-law lien; how treated.**

A nonconsensual common-law lien is not binding or enforceable at law or in equity. Any nonconsensual common-law lien that is recorded is void and unenforceable.

**Source:** Laws 2013, LB3, § 4.

**52-1906 Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.**

In order that the owner of real property upon which a nonconsensual common-law lien is recorded shall have notice of the recording of the lien, the claimant shall cause the sheriff to serve a copy of the recorded lien upon the owner of the real property upon which the nonconsensual common-law lien is recorded and the sheriff shall make return thereof without delay by filing proof of service with the register of deeds as provided in subsection (1) of section 25-507.01. There shall be no filing fee for filing the proof of service. A judicial proceeding to enforce a nonconsensual common-law lien shall be instituted by the claimant within ten days after recording the lien. Failure to serve a copy of the recorded lien upon the owner or failure to file a judicial proceeding to enforce the lien shall cause the lien to lapse and be of no legal effect.

**Source:** Laws 2013, LB3, § 5.

**52-1907 Submission for filing or recording; liability.**

If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of sections 52-1901 and 52-1905 to 52-1907 or section 76-296 and such

document is so filed or recorded, the claimant submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

**Source:** Laws 2003, LB 655, § 2; R.S.1943, (2010), § 52-1902; Laws 2013, LB3, § 6.

## ARTICLE 20 HOMEOWNERS' ASSOCIATION

### Section

52-2001. Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.

**52-2001 Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.**

(1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate from the time the assessment becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages or deeds of trust are recorded. The homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate but the homeowners' association shall give reasonable notice of its action to all lienholders of real estate whose interest would be affected. Unless the homeowners' association declaration or agreement otherwise provides, fees, charges, late charges, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(2) A lien under this section is prior to all other liens and encumbrances on real estate except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust on real estate recorded before the notice required under subsection (1) of this section has been recorded for a delinquent assessment for which enforcement is sought, and (c) liens for real estate taxes and other governmental assessments or charges against real estate. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(3) Unless the declaration or agreement otherwise provides, if two or more homeowners' associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(5) This section does not prohibit actions to recover sums for which subsection (1) of this section creates a lien or prohibit a homeowners' association from taking a deed in lieu of foreclosure.

(6) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(7) The homeowners' association, upon written request, shall furnish to a homeowners' association member a recordable statement setting forth the

amount of unpaid assessments against his or her real estate. The statement must be furnished within ten business days after receipt of the request and is binding on the homeowners' association, the governing board, and every homeowners' association member.

(8) The homeowners' association declaration, agreements, bylaws, rules, or regulations may not provide that a lien on a member's real estate for any assessment levied against real estate relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice required under subsection (1) of this section.

(9) In the event of a conflict between the provisions of the declaration and the bylaws, rules, or regulations or any other agreement of the homeowners' association, the declaration prevails except to the extent the declaration is inconsistent with this section.

(10)(a) The homeowners' association may require a person who purchases restricted real estate on or after September 6, 2013, to make payments into an escrow account established by the homeowners' association until the balance in the escrow account for that restricted real estate is in an amount not to exceed six months of assessments.

(b) All payments made under this subsection and received on or after September 6, 2013, shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association, or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the homeowners' association. Upon request by an owner of restricted real estate, the homeowners' association shall disclose the name of the financial institution and the account number where the payments made under this subsection are being held. The homeowners' association may maintain a single escrow account to hold payments made under this subsection from all of the owners of restricted real estate. If a single escrow account is maintained, the homeowners' association shall maintain separate accounting records for each owner of restricted real estate.

(c) The payments made under this subsection may be used by the homeowners' association to satisfy any assessments attributable to an owner of restricted real estate for which assessment payments are delinquent. To the extent that the escrow deposit or any part thereof is applied to offset any unpaid assessments of an owner of restricted real estate, the homeowners' association may require such owner to replenish the escrow deposit.

(d) The homeowners' association shall return the payments made under this subsection, together with any interest earned on such payments, to the owner of restricted real estate when the owner sells the restricted real estate and has fully paid all assessments.

(e) Nothing in this subsection shall prohibit the homeowners' association from establishing escrow deposit requirements in excess of the amounts authorized in this subsection pursuant to provisions in the homeowners' association's declaration.

(11) For purposes of this section:

(a) Declaration means any instruments, however denominated, that create the homeowners' association and any amendments to those instruments;

(b)(i) Homeowners' association means an association whose members consist of a private group of fee simple owners of residential real estate formed for the purpose of imposing and receiving payments, fees, or other charges for:

(A) The use, rental, operation, or maintenance of common elements available to all members and services provided to the member for the benefit of the member or his or her real estate;

(B) Late payments of assessments and, after notice and opportunity to be heard, the levying of fines for violations of homeowners' association declarations, agreements, bylaws, or rules and regulations; or

(C) The preparation and recordation of amendments to declarations, agreements, resale statements, or statements for unpaid assessments; and

(ii) Homeowners' association does not include a co-owners association organized under the Condominium Property Act or a unit owners association organized under the Nebraska Condominium Act; and

(c) Real estate means the real estate of a homeowners' association member as such real estate is specifically described in the member's homeowners' association declaration or agreement.

**Source:** Laws 2010, LB736, § 1; Laws 2013, LB442, § 1.

#### Cross References

Condominium Property Act, see section 76-801.

Nebraska Condominium Act, see section 76-825.

## ARTICLE 21

### COMMERCIAL REAL ESTATE BROKER LIEN ACT

#### Section

52-2101. Act, how cited.

52-2102. Terms, defined.

52-2103. Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.

52-2104. Notice of lien; mailing of notice required; effect on lien.

52-2105. Notice of lien; contents.

52-2106. Lien; period of enforceability.

52-2107. Priority of liens.

52-2108. Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.

#### **52-2101 Act, how cited.**

Sections 52-2101 to 52-2108 shall be known and may be cited as the Commercial Real Estate Broker Lien Act.

**Source:** Laws 2013, LB3, § 7.

#### **52-2102 Terms, defined.**

For purposes of the Commercial Real Estate Broker Lien Act:

(1) Commercial real estate means any real estate other than real estate containing no more than four residential units or real estate on which no buildings or structures are located and that is zoned for single-family residential use. Commercial real estate does not include single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units



may be a part of a larger building or parcel of real estate containing more than four residential units;

(2) Commission means any and all compensation that may be due a commercial real estate broker for performance of licensed services; and

(3) Commission agreement means a written agreement with a designated commercial real estate broker as required by subsections (2) through (6) of section 76-2422.

**Source:** Laws 2013, LB3, § 8.

**52-2103 Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.**

(1)(a) A commercial real estate broker shall have a lien upon commercial real estate or any interest in that commercial real estate that is the subject of a purchase, lease, or other conveyance to a buyer or tenant of an interest in the commercial real estate in the amount of commissions that the commercial real estate broker is due.

(b) The lien shall be available only to the commercial real estate broker named in a commission agreement signed by an owner or buyer or their respective authorized agents as applicable and is not available to an employee, agent, subagent, or independent contractor of a commercial real estate broker.

(2) A lien under this section shall attach to commercial real estate or any interest in the commercial real estate when:

(a) The commercial real estate broker is entitled to a commission provided in a commission agreement signed by the owner, buyer, or their respective authorized agents, as applicable; and

(b) The commercial real estate broker records a notice of lien in the office of the register of deeds of the county in which the commercial real estate is located, prior to the actual conveyance or transfer of the commercial real estate against which the commercial real estate broker is claiming a lien, except as provided in this section. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(3) In the case of a lease, including a sublease or an assignment of a lease, the notice of lien shall be recorded not later than ninety days after the tenant takes possession of the leased premises. The lien shall attach as of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(4)(a) If a commercial real estate broker is due an additional commission as a result of future actions, including, but not limited to, the exercise of an option to expand the leased premises or to renew or extend a lease pursuant to a commission agreement signed by the then owner, the commercial real estate broker may record its notice of lien at any time after execution of the lease or other commission agreement which contains such option, but not later than ninety days after the event or occurrence on which the future commission is claimed occurs.

(b) In the event that the commercial real estate is sold or otherwise conveyed prior to the date on which a future commission is due, and if the commercial real estate broker has filed a valid notice of lien prior to the sale or other conveyance of the commercial real estate, then the purchaser or transferee

shall be deemed to have notice of and shall take title to the commercial real estate subject to the notice of lien. If a commercial real estate broker claiming a future commission fails to record its notice of lien for future commission prior to the recording of a deed conveying legal title to the commercial real estate to the purchaser or transferee, then such commercial real estate broker shall not claim a lien on the commercial real estate. This subsection shall not limit or otherwise affect claims or defenses a commercial real estate broker or owner or any other party may have on any other basis, in law or in equity.

(5) If a commercial real estate broker has a commission agreement as described in subdivision (4)(a) of this section with a prospective buyer, then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the commercial real estate broker in the office of the register of deeds of the county in which the commercial real estate, or any interest in the commercial real estate, is located, within ninety days after the purchase or other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

**Source:** Laws 2013, LB3, § 9.

**52-2104 Notice of lien; mailing of notice required; effect on lien.**

The commercial real estate broker shall, within ten days after recording its notice of lien, either mail a copy of the notice of lien to the owner of record of the commercial real estate by registered or certified mail at the address of the owner stated in the commission agreement on which the claim for lien is based or, if no such address is given, then to the address of the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in a United States mailbox with postage prepaid. The commercial real estate broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the manner required by this section.

**Source:** Laws 2013, LB3, § 10.

**52-2105 Notice of lien; contents.**

The notice of lien shall state the name of the commercial real estate broker, the name as reflected in the commercial real estate broker's records of any person the commercial real estate broker believes to be an owner of the commercial real estate on which the lien is claimed, the name as reflected in the commercial real estate broker's records of any person whom the commercial real estate broker believes to be obligated to pay the commission under the commission agreement, a description legally sufficient for identification of the commercial real estate upon which the lien is claimed, and the amount for which the lien is claimed. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signatories. The notice of lien shall be signed by the commercial real estate broker or by a person authorized to sign on behalf of the commercial real estate broker and shall be notarized.

**Source:** Laws 2013, LB3, § 11.

**52-2106 Lien; period of enforceability.**

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in section 52-2103 shall continue to be enforceable for two years after the recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, mortgage, or trust deed, or other person having an interest in the commercial real estate gives the commercial real estate broker written demand to institute a judicial proceeding within thirty days, the lien lapses unless, within thirty days after receipt of the written demand, the commercial real estate broker institutes judicial proceedings.

(3) If a judicial proceeding to enforce a lien is instituted while a lien is effective under subsection (1) or (2) of this section, the lien continues during the pendency of the proceeding.

**Source:** Laws 2013, LB3, § 12.

### **52-2107 Priority of liens.**

(1) Recorded liens, mortgages, trust deeds, and other encumbrances on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date the commercial real estate broker's lien is recorded, shall have priority over the commercial real estate broker's lien.

(2) A construction lien claim that is recorded after the commercial real estate broker's notice of lien but that relates back to a date prior to the recording date of the commercial real estate broker's notice of lien has priority over the commercial real estate broker's lien.

(3) A purchase-money lien executed by the buyer of commercial real estate in connection with a loan for which any part of the proceeds are used to pay the purchase price of the commercial real estate has priority over a commercial real estate broker's lien claimed for the commission owed by the buyer against the commercial real estate purchased by the buyer.

**Source:** Laws 2013, LB3, § 13.

### **52-2108 Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.**

(1) Whenever a notice of a commercial real estate broker's lien has been recorded, the record owner of the commercial real estate may have the lien released by depositing funds equal to the full amount stated in the notice of lien plus fifteen percent to be applied towards any lien under section 52-2103. These funds shall be held in escrow by such person and by such process which may be agreed to by the parties, either in the commission agreement or otherwise, for the payment to the commercial real estate broker or otherwise for resolution for their dispute or, in the absence of any such mutually agreed person or process, the funds may be deposited with the district court by the filing of an interpleader. Upon such deposit of funds by interpleader, the commercial real estate shall be considered released from such lien or claim of lien. Upon written notice to the commercial real estate broker that the funds have been escrowed or an interpleader filed, the commercial real estate broker shall, within ten business days, record in the office of the register of deeds where the notice of commercial real estate broker's lien was filed pursuant to section 52-2103 a document stating that the lien is released and the commercial real estate

released by an escrow established pursuant to this section or by interpleader. If the commercial real estate broker fails to file such document, the person holding the funds may sign and file such document and deduct from the escrow the reasonable cost of preparing and filing the document. Upon the filing of such document, the commercial real estate broker shall be deemed to have an equitable lien on the escrow funds pending a resolution of the commercial real estate broker's claim for payment and the funds shall not be paid to any person, except for such payment to the holder of the funds as set forth in this section, until a resolution of the commercial real estate broker's claim for payment has been agreed to by all necessary parties or ordered by a court having jurisdiction.

(2) Except as otherwise provided in this section, whenever a commercial real estate broker's lien has been recorded and an escrow account is established either from the proceeds from the transaction, conveyance, or any other source of funds computed as one hundred fifteen percent of the amount of the claim for lien, then the lien against the commercial real estate shall be extinguished and immediately become a lien on the funds contained in the escrow account. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to complete or close the transaction.

**Source:** Laws 2013, LB3, § 14.

## ARTICLE 22 CONTINUATION STATEMENTS

### Section

52-2201. Financing statement filed prior to November 1, 2003; loss of perfection; continuation statement; filing required; contents; effect; Secretary of State; duties.

**52-2201 Financing statement filed prior to November 1, 2003; loss of perfection; continuation statement; filing required; contents; effect; Secretary of State; duties.**

A financing statement filed to perfect a lien pursuant to sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 52-1401 to 52-1411, 54-201, or 54-208, which was properly filed prior to November 1, 2003, shall lose its perfection unless a continuation statement is filed with the Secretary of State after June 30, 2014, and before January 1, 2015. Such continuation statement shall include a statement that the original financing statement is still effective. The filing of a continuation statement shall preserve the priority of the original filing and shall be effective for five years after the date of filing of the continuation statement and may be subsequently continued as provided in article 9, Uniform Commercial Code. Not later than May 31, 2014, the Secretary of State shall notify, by first-class mail, the lienholders of record of the liens described in this section that such a lien shall lose its perfection unless a continuation statement is filed with the Secretary of State as provided in this section.

**Source:** Laws 2014, LB750, § 1.

## LIQUORS

# CHAPTER 53

## LIQUORS

### Article.

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### ARTICLE 1

#### NEBRASKA LIQUOR CONTROL ACT

##### (a) GENERAL PROVISIONS

### Section

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## (a) GENERAL PROVISIONS

**53-101 Act, how cited.**

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 1, p. 373; C.S.Supp., 1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB 549, § 1; Laws 2007, LB 578, § 1; Laws 2009, LB 232, § 1; Laws 2009, LB 355, § 1; Laws 2010, LB 258, § 1; Laws 2010, LB 861, § 7; Laws 2011, LB 407, § 1; Laws 2012, LB 824, § 1; Laws 2012, LB 1130, § 1; Laws 2015, LB 118, § 2; Laws 2015, LB 330, § 2.

**53-103 Definitions, where found.**

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.46 apply.

**Source:** Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S. 1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 318, § 2, p. 886; Laws 1965, c. 319, § 1, p. 904; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 183, § 1; Laws 1985, LB 279, § 2; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 154, § 1; Laws 1989, LB 441, § 2; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB 278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2; Laws 2008, LB1103, § 1; Laws 2009, LB137, § 1; Laws 2009, LB355, § 2; Laws 2010, LB788, § 1; Laws 2010, LB861, § 8; Laws 2012, LB824, § 2; Laws 2015, LB330, § 3.

**53-103.03 Beer, defined.**

Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, near beer, flavored malt beverage, and hard cider.

**Source:** Laws 2010, LB861, § 11; Laws 2012, LB824, § 3; Laws 2015, LB330, § 4.

**53-103.05 Brewpub, defined.**

Brewpub means any restaurant or hotel which produces on its premises a maximum of twenty thousand barrels of beer per year.

**Source:** Laws 2010, LB861, § 13; Laws 2012, LB780, § 1.

**53-103.08 Cigar shop, defined.**

Cigar shop means an establishment operated by a holder of a Class C liquor license which:

(1) Does not sell food;

(2) In addition to selling alcohol, annually receives ten percent or more of its gross revenue from the sale of cigars, other tobacco products, and tobacco-related products, except from the sale of cigarettes as defined in section 69-2702. A cigar shop shall not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products;

(3) Has a walk-in humidor on the premises; and

(4) Does not permit the smoking of cigarettes.

**Source:** Laws 2010, LB861, § 16; Laws 2015, LB118, § 3.

**53-103.09 Club, defined.**

(1) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, and (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests.

(2) The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club.

**Source:** Laws 2010, LB861, § 17; Laws 2016, LB1105, § 6.  
Effective date April 19, 2016.

**53-103.18 Manager, defined.**

Manager means a person appointed by a corporation or limited liability company to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the Nebraska Liquor Control Act as though he or she were the applicant, including residency.

**Source:** Laws 2010, LB861, § 26; Laws 2016, LB1105, § 7.  
Effective date April 19, 2016.

**53-103.20 Manufacturer, defined.**

Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, restaurant, hotel, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer.

**Source:** Laws 2010, LB861, § 28; Laws 2016, LB1105, § 8.  
Effective date April 19, 2016.

**53-103.21 Microbrewery, defined.**

Microbrewery means any small brewery producing a maximum of twenty thousand barrels of beer per year.

**Source:** Laws 2010, LB861, § 29; Laws 2012, LB780, § 2.

**53-103.38 Spirits, defined.**

Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution. Spirits includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified,

blended, or otherwise mixed with alcohol or other substances. Spirits does not include flavored malt beverages.

**Source:** Laws 2010, LB861, § 46; Laws 2012, LB824, § 5.

**53-103.41 Wholesaler, defined.**

Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the Nebraska Liquor Control Act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date.

Wholesaler includes a distributor, distributorship, and jobber.

**Source:** Laws 2010, LB861, § 49; Laws 2016, LB1105, § 9.  
Effective date April 19, 2016.

**53-103.43 Flavored malt beverage, defined.**

Flavored malt beverage means a beer that derives not more than forty-nine percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation, except that in the case of a malt beverage with an alcohol content of more than six percent by volume, not more than one and one-half percent of the volume of the malt beverage may consist of alcohol derived from flavors, flavorings, or other nonbeverage ingredients containing alcohol obtained by distillation.

**Source:** Laws 2012, LB824, § 4.

**53-103.44 Hard cider, defined.**

Hard cider means still wine (1)(a) derived primarily from apples or apple concentrate and water such that apple juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, represents more than fifty percent of the volume of the finished product or (b) derived primarily from pears or pear concentrate and water such that pear juice, or the equivalent amount of concentrate reconstituted to the original brix of the juice prior to concentration, represents more than fifty percent of the volume of the finished product, (2) containing at least one-half of one percent and less than eight and one-half percent alcohol by volume, (3) having the taste, aroma, and characteristics generally attributed to hard cider, and (4) sold or offered for sale as hard cider.

**Source:** Laws 2015, LB330, § 5; Laws 2016, LB1105, § 10.  
Effective date April 19, 2016.

**53-103.45 Pedal-pub vehicle, defined.**

Pedal-pub vehicle means a multi-passenger, human-powered vehicle.

**Source:** Laws 2015, LB330, § 6.

**53-103.46 Powdered alcohol, defined.**

Powdered alcohol means alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

**Source:** Laws 2015, LB330, § 7.

(b) NEBRASKA LIQUOR CONTROL COMMISSION; ORGANIZATION

**53-110 Commissioners and employees; qualifications; employment by licensee authorized; restrictions.**

(1) No person shall be appointed as a commissioner, the executive director of the commission, or an employee of the commission who is not a citizen of the United States and who has not resided within the State of Nebraska successively for two years next preceding the date of his or her appointment.

(2) No person (a) convicted of or who has pleaded guilty to a felony or any violation of any federal or state law concerning the manufacture or sale of alcoholic liquor prior or subsequent to the passage of the Nebraska Liquor Control Act, (b) who has paid a fine or penalty in settlement of any prosecution against him or her for any violation of such laws, or (c) who has forfeited his or her bond to appear in court to answer charges for any such violation shall be appointed commissioner.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, no commissioner or employee of the commission may, directly or indirectly, individually, as a member of a partnership, as a member of a limited liability company, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor, receive any compensation or profit from such manufacture, sale, or distribution, or have any interest whatsoever in the purchases or sales made by the persons authorized by the act to purchase or to sell alcoholic liquor.

(b) With the written approval of the executive director, an employee of the commission, other than the executive director or a division manager, may accept part-time or seasonal employment with a person licensed or regulated by the commission. No such employment shall be approved if the licensee receives more than fifty percent of the licensee's gross revenue from the sale or dispensing of alcoholic liquor.

(4) This section shall not prevent any commissioner, the executive director, or any employee from purchasing and keeping in his or her possession for the use of himself, herself, or members of his or her family or guests any alcoholic liquor which may be purchased or kept by any person pursuant to the act.

**Source:** Laws 1935, c. 116, § 11, p. 380; C.S.Supp.,1941, § 53-311; R.S.1943, § 53-110; Laws 1989, LB 780, § 3; Laws 1991, LB 344, § 7; Laws 1993, LB 121, § 318; Laws 2011, LB407, § 2.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

**53-117 Powers, functions, and duties.**

The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, nonbeverage users, retailers, railroads including owners and lessees of sleeping, dining, and cafe cars, airlines, boats, and pedal-pub vehicles in accordance with the Nebraska Liquor Control Act;

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations not inconsistent with federal laws for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of sanitation, purity of products, truthful representations, and honest dealings in a manner that generally will promote the public health and welfare. All such rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(3) To call upon other administrative departments of the state, county and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as the commission deems necessary in the performance of its duties. The commission shall enter into an agreement with the Nebraska State Patrol in which the Nebraska State Patrol shall hire six new patrol officers and, from the entire Nebraska State Patrol, shall designate a minimum of six patrol officers who will spend a majority of their time in administration and enforcement of the Nebraska Liquor Control Act;

(4) To recommend to local governing bodies rules and regulations not inconsistent with law for the distribution and sale of alcoholic liquor throughout the state;

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

(7) To conduct or cause to be conducted an audit to inspect any licensee's records and books;

(8) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof material for its information in the discharge of its duties under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

**Source:** Laws 1935, c. 116, § 16, p. 382; C.S.Supp.,1941, § 53-316; R.S.1943, § 53-117; Laws 1959, c. 245, § 1, p. 842; Laws 1965,



c. 318, § 4, p. 891; Laws 1967, c. 332, § 1, p. 879; Laws 1974, LB 681, § 4; Laws 1980, LB 848, § 2; Laws 1981, LB 545, § 15; Laws 1988, LB 1089, § 6; Laws 1989, LB 781, § 4; Laws 1991, LB 344, § 11; Laws 1993, LB 183, § 5; Laws 1999, LB 267, § 5; Laws 2004, LB 485, § 6; Laws 2013, LB579, § 1; Laws 2015, LB330, § 9.

**53-117.03 Employee and management training; commission; powers and duties; fees; certification.**

(1) On or before January 1, 2007, the commission shall adopt and promulgate rules and regulations governing programs which provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. Such rules and regulations may include, but need not be limited to:

(a) Minimum standards governing training of beverage servers, including standards and requirements governing curriculum, program trainers, and certification requirements;

(b) Minimum standards governing training in management of licensed premises, including standards and requirements governing curriculum, program trainers, and certification requirements;

(c) Minimum standards governing the methods allowed for training programs which may include the Internet, interactive video, live training in various locations across the state, and other means deemed appropriate by the commission;

(d) Methods for approving beverage-server training organizations and programs. All beverage-server training programs approved by the commission shall issue a certificate of completion to all persons who successfully complete the program and shall provide the names of all persons completing the program to the commission;

(e) Enrollment fees in an amount determined by the commission to be necessary to cover the administrative costs, including salary and benefits, of enrolling in a training program offered by the commission pursuant to subsection (2) of this section, but not to exceed thirty dollars; and

(f) Procedures and fees for certification, which fees shall be in an amount determined by the commission to be sufficient to defray the administrative costs, including salary and benefits, associated with maintaining a list of persons certified under this section and issuing proof of certification to eligible individuals but shall not exceed twenty dollars.

(2) The commission may create a program to provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. The program shall include training on the issues of sales and service of alcoholic liquor to minors and to visibly inebriated purchasers. The commission may charge each person enrolling in the program an enrollment fee as provided in the rules and regulations, but such fee shall not exceed thirty dollars. All such fees shall be collected by the commission and remitted to the State Treasurer for credit to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) A person who has completed a training program which complies with the rules and regulations, whether such program is offered by the commission or

by another organization, may become certified by the commission upon the commission receiving evidence that he or she has completed such program and the person seeking certification paying the certification fee established under this section.

**Source:** Laws 2006, LB 845, § 3; Laws 2013, LB199, § 22.

**53-117.06 Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.**

Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any administrative costs, including salary and benefits, incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Liquor Control Commission Rule and Regulation 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 70, § 4; Laws 1989, LB 781, § 18; Laws 1993, LB 183, § 7; Laws 1993, LB 332, § 6; Laws 1994, LB 1066, § 42; Laws 2008, LB993, § 1; Laws 2009, First Spec. Sess., LB3, § 28; Laws 2013, LB199, § 23.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**53-117.07 Proceedings to suspend, cancel, or revoke licenses before commission.**

All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, boats, and pedal-pub vehicles shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so suspended, canceled, or revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

**Source:** Laws 1935, c. 116, § 94, p. 425; C.S.Supp.,1941, § 53-394; R.S.1943, § 53-140; Laws 1967, c. 332, § 11, p. 891; Laws 1980, LB 848, § 8; Laws 1988, LB 1089, § 19; R.S.1943, (1988), § 53-140; Laws 1991, LB 344, § 12; Laws 1996, LB 750, § 2; Laws 2007, LB549, § 4; Laws 2015, LB330, § 10.

(d) LICENSES; ISSUANCE AND REVOCATION

**53-121 Repealed. Laws 2014, LB 863, § 31.**

**53-122 Sale of liquor by drink; license issuance authorized; exception.**

The commission may issue licenses for the sale of alcoholic liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska

Liquor Control Act in all cities and villages in this state, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

**Source:** Laws 1935, c. 116, § 48, p. 403; C.S.Supp.,1941, § 53-348; R.S.1943, § 53-122; Laws 1963, c. 309, § 1, p. 911; Laws 1963, c. 310, § 2, p. 923; Laws 1969, c. 439, § 1, p. 1469; Laws 1973, LB 556, § 1; Laws 1977, LB 40, § 311; Laws 1984, LB 920, § 43; Laws 1988, LB 1089, § 7; Laws 1989, LB 781, § 5; Laws 1991, LB 344, § 15; Laws 1993, LB 183, § 8; Laws 1994, LB 76, § 570; Laws 1999, LB 267, § 6; Laws 2001, LB 278, § 2; Laws 2004, LB 485, § 8; Laws 2005, LB 98, § 34; Laws 2010, LB861, § 51; Laws 2014, LB863, § 23.

### **53-123 Licenses; types.**

Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; (14) microdistillery license; (15) entertainment district license; and (16) pedal-pub vehicle license.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c. 332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5; Laws 2012, LB1130, § 2; Laws 2015, LB330, § 11.

### **53-123.01 Manufacturer's license; rights of licensee; craft brewery license holder; when required to obtain manufacturer's license; rights of holder.**

(1) A manufacturer's license shall allow the manufacture, storage, and sale of alcoholic liquor to wholesale licensees in this state and to such persons outside the state as may be permitted by law, except that nothing in the Nebraska Liquor Control Act shall prohibit a manufacturer of beer from distributing tax-paid samples of beer at the premises of a licensed manufacturer for consumption on the premises. A manufacturer's license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer manufactured on the licensed premises for consumption on the licensed premises.

(2)(a) A licensee who or which first obtains a craft brewery license pursuant to section 53-123.14, holds such license for not less than three years, and operates a brewpub or microbrewery on the licensed premises of such craft brewery license shall obtain a manufacturer's license when the manufacture of beer on the licensed premises exceeds twenty thousand barrels per year. The manufacturer's license shall authorize the continued retail sale of beer for consumption on or off the premises but only to the extent the premises were previously licensed as a craft brewery. The sale of any beer other than beer

manufactured by the licensee, wine, or alcoholic liquor for consumption on the licensed premises shall require the appropriate retail license. The holder of such manufacturer's license may continue to operate up to five retail locations which are in operation at the time such manufacturer's license is issued and shall divest itself from retail locations in excess of five locations. The licensee shall not begin operation at any new retail location even if the licensee's production is reduced below twenty thousand barrels per year.

(b) The holder of such manufacturer's license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(1), p. 617; Laws 1947, c. 188, § 1(1), p. 621; Laws 1982, LB 431, § 1; Laws 1991, LB 344, § 17; Laws 1996, LB 750, § 4; Laws 2016, LB1105, § 11.

Effective date April 19, 2016.

**53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.**

(1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the retail license, on the premises specified in the retail license or the entertainment district license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or 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.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

**Source:** Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(4), p. 617; Laws

1947, c. 188, § 1(4), p. 622; Laws 1965, c. 318, § 5, p. 892; Laws 1973, LB 111, § 3; Laws 1978, LB 386, § 3; Laws 1988, LB 1089, § 9; Laws 1989, LB 154, § 2; Laws 1989, LB 441, § 3; Laws 1991, LB 344, § 20; Laws 1993, LB 53, § 2; Laws 1994, LB 859, § 4; Laws 2001, LB 278, § 3; Laws 2004, LB 485, § 12; Laws 2006, LB 562, § 2; Laws 2012, LB1130, § 3.

**53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.**

(1) A farm winery license shall entitle the holder to:

(a) Sell wines produced at the farm winery onsite at wholesale and retail and to sell wines produced at the farm winery at off-premises sites holding the appropriate retail license;

(b) Sell wines produced at the farm winery at retail for consumption on the premises;

(c)(i) Permit a customer to remove one unsealed bottle of wine for consumption off the premises. The licensee or his or her agent shall (A) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (B) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine.

(ii) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or 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;

(d) Ship wines produced at the farm winery by common carrier and sold at retail to recipients in and outside the State of Nebraska, if the output of such farm winery for each calendar year as reported to the commission by December 31 of each year does not exceed thirty thousand gallons. In the event such amount exceeds thirty thousand gallons, the farm winery shall be required to use a licensed wholesaler to distribute its wines for the following calendar year, except that this requirement shall not apply to wines produced and sold onsite at the farm winery pursuant to subdivision (1)(a) of this section;

(e) Allow sampling of the wine at the farm winery and at one branch outlet in the state in reasonable amounts;

(f) Sell wines produced at the farm winery to other Nebraska farm winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such regulations existed on January 1, 2008;

(g) Purchase distilled spirits from licensed microdistilleries in Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm winery wine to be used in the production of fortified wine at the purchasing licensed farm winery; and

(h) Store and warehouse products produced at the farm winery in a designated, secure, offsite storage facility if the holder of the farm winery license notifies the commission of the location of the facility and maintains, at the farm winery and at the facility, a separate perpetual inventory of the product stored at the facility. Consumption of alcoholic liquor at the facility is strictly prohibited.

(2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.

(3) A farm winery may manufacture and sell hard cider on its licensed premises. A farm winery shall not otherwise distribute the hard cider it manufactures except by sale to a wholesaler licensed under the Nebraska Liquor Control Act.

(4) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.

(5) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

**Source:** Laws 1985, LB 279, § 5; Laws 1991, LB 344, § 23; Laws 1997, LB 479, § 1; Laws 2003, LB 536, § 3; Laws 2006, LB 562, § 3; Laws 2008, LB1103, § 2; Laws 2010, LB861, § 52; Laws 2015, LB330, § 12.

### **53-123.12 Farm winery license; application requirements; renewal; fees.**

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall include with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of receipt by mail or electronic delivery of such application from the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

**Source:** Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53; Laws 2011, LB407, § 3.

### **53-123.14 Craft brewery license; rights of licensee.**



Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit the production of a maximum of twenty thousand barrels of beer per year in the aggregate from all physical locations comprising the licensed premises. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the craft brewery licensee, wine, or alcoholic liquor by the drink for consumption on the licensed premises shall require the appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17. For purposes of this section, licensed premises may include up to five separate physical locations.

**Source:** Laws 1988, LB 1089, § 3; Laws 1991, LB 344, § 25; Laws 1994, LB 1292, § 3; Laws 1996, LB 750, § 5; Laws 2012, LB780, § 3; Laws 2012, LB1130, § 4; Laws 2016, LB1105, § 12.  
Effective date April 19, 2016.

**53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action; holder of license; duties; report; contents.**

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer. Fees remitted prior to July 1, 2016, shall be credited to the General Fund. Fees remitted beginning on July 1, 2016, shall be credited to the Nebraska Beer Industry Promotional Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any manufacturer who sells and ships alcoholic liquor from another state directly to a consumer in this state if the manufacturer satisfies the requirements of subsections (7) through (9) of this section. A manufacturer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacture direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The commission may issue a shipping license to any retailer who is licensed within or outside Nebraska, who is authorized to sell alcoholic liquor at retail in the state of domicile of the retailer, and who is not a manufacturer if such retailer satisfies the requirements of subsections (7) through (9) of this section to ship alcoholic liquor from another state directly to a consumer in this state. A retailer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a retail direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(6) The application for a shipping license under subsection (2) or (3) of this section shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine.

(7) The application for a shipping license under subsection (4) or (5) of this section shall be in such form as the commission prescribes. The application shall require an applicant which is a manufacturer, a craft brewery, a craft distillery, or a farm winery to identify the brands of alcoholic liquor that the applicant is requesting the authority to ship either into or within Nebraska. For all applicants, unless otherwise provided in this section, the application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers or retailers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States;

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers or retailers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine;

(d) That the applicant agrees to notify the commission of any violations in the state in which he or she is domiciled and any violations of the direct shipping laws of any other states. Failure to notify the commission within thirty days after such a violation may result in a hearing before the commission pursuant to which the license may be suspended, canceled, or revoked; and

(e) That the applicant, if a manufacturer, craft brewery, craft distillery, or farm winery, agrees to notify any wholesaler licensed in Nebraska that has been authorized to distribute such brands that the application has been filed for a shipping license. The notice shall be in writing and in a form prescribed by the commission. The commission may adopt and promulgate rules and regulations as it reasonably deems necessary to implement this subdivision, including rules and regulations that permit the holder of a shipping license under this subdivision to amend the shipping license by, among other things, adding or deleting any brands of alcoholic liquor identified in the shipping license.

(8) Any manufacturer or retailer who is granted a shipping license under subsection (4) or (5) of this section shall:

(a) Only ship the brands of alcoholic liquor identified on the application;

(b) Only ship alcoholic liquor that is owned by the holder of the shipping license;

(c) Only ship alcoholic liquor that is properly registered with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury;

(d) Not ship any alcoholic liquor products that the manufacturers or wholesalers licensed in Nebraska have voluntarily agreed not to bring into Nebraska at the request of the commission;

(e) Not ship more than nine liters of alcoholic liquor per month to any person in Nebraska to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale; and

(f) Cause the direct shipment of alcoholic liquor to be by approved common carrier only. The commission shall adopt and promulgate rules and regulations pursuant to which common carriers may apply for approval to provide common carriage of alcoholic liquor shipped by a holder of a shipping license issued pursuant to subsection (4) or (5) of this section. The rules and regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he or she is at least twenty-one years of age, (ii) the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the commission, and (iii) the commission-approved common carrier to submit to the commission such information as the commission may

prescribe. The commission-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of twenty-one years and refuses to present valid identification. All holders of shipping licenses shipping alcoholic liquor pursuant to this subdivision shall affix a conspicuous notice in sixteen-point type or larger to the outside of each package of alcoholic liquor shipped within or into the State of Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the holder of the shipping license shall be liable only for their independent acts.

(9) For purposes of sections 53-160, 77-2703, and 77-27,142, each shipment of alcoholic liquor by the holder of a shipping license under subsection (3), (4), or (5) of this section shall constitute a sale in Nebraska by establishing a nexus in the state. The holder of the shipping license shall collect all the taxes due to the State of Nebraska and any political subdivision and remit any excise taxes monthly to the commission and any sales taxes to the Department of Revenue.

(10) By July 1, 2014, the commission shall report to the General Affairs Committee of the Legislature the number of shipping licenses issued for license years 2013-14 and 2014-15. The report shall be made electronically.

**Source:** Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1; Laws 2011, LB286, § 1; Laws 2013, LB230, § 1; Laws 2015, LB330, § 13; Laws 2016, LB1105, § 13.  
Effective date April 19, 2016.

### **53-123.16 Microdistillery license; rights of licensee.**

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, or an entertainment district license pursuant to section 53-123.17. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

**Source:** Laws 2007, LB549, § 6; Laws 2012, LB1130, § 5.

**53-123.17 Entertainment district license; rights of licensee; application; fee; commission; duties; occupation tax; local governing body; powers.**

(1) A local governing body may designate an entertainment district in which a commons area may be used by retail, craft brewery, and microdistillery licensees and holders of a manufacturer's license which obtain an entertainment district license. The local governing body may, at any time, revoke such designation if it finds that the commons area threatens the health, safety, or welfare of the public or has become a common nuisance. The local governing body shall file the designation or the revocation of the designation with the commission.

(2) An entertainment district license allows the sale of alcoholic liquor for consumption on the premises within the confines of a commons area. The consumption of alcoholic liquor in the commons area shall only occur during the hours authorized for sale of alcoholic liquor for consumption on the premises under section 53-179 and while food service is available in the commons area. Only the holder of an entertainment district license or employees of such licensee may sell or dispense alcoholic liquor in the commons area.

(3) An entertainment district licensee shall serve alcoholic liquor to be consumed in the commons area in containers that prominently displays the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's retail license, craft brewery license, microdistillery license, or manufacturer's license. An entertainment district licensee may allow alcohol sold by another entertainment district licensee to enter the licensed premises of either licensee. No entertainment district licensee shall allow alcoholic liquor to leave the commons area or the premises licensed under its retail license, craft brewery license, microdistillery license, or manufacturer's license.

(4) If the licensed premises of the holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, or a manufacturer's license is adjacent to a commons area in an entertainment district designated by a local governing body pursuant to this section, the holder of the license may obtain an annual entertainment district license as prescribed in this section. The entertainment district license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or manufacturer's license.

(5) In order to obtain an entertainment district license, a person eligible under subsection (4) of this section shall:

(a) File an application with the commission upon such forms as the commission prescribes; and

(b) Pay an additional license fee of three hundred dollars for the privilege of serving alcohol in the entertainment district payable to the clerk of the local governing body in the same manner as license fees under subdivision (4) of section 53-134.

(6) When an application for an entertainment district license is filed, the commission shall notify the clerk of the local governing body. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(7) The local governing body may impose an occupation tax on the business of an entertainment district licensee doing business within the liquor license jurisdiction of the local governing body as provided in subdivision (11)(b) of this section in accordance with section 53-132.

(8) The local governing body with respect to entertainment district licensees within its liquor license jurisdiction as provided in subdivision (11)(b) of this section may cancel an entertainment district license for cause for the remainder of the period for which such entertainment district license is issued. Any person whose entertainment district license is canceled may appeal to the commission in accordance with section 53-134.

(9) A local governing body may regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, any area it designates as an entertainment district.

(10) Violation of any provision of this section or any rules or regulations adopted and promulgated pursuant to this section by an entertainment district licensee may be cause to revoke, cancel, or suspend the retail license issued under subsection (6) of section 53-124, craft brewery license, microdistillery license, or manufacturer's license held by such licensee.

(11) For purposes of this section:

(a) Commons area means an area:

- (i) Within an entertainment district designated by a local governing body;
- (ii) Shared by authorized licensees with entertainment district licenses;
- (iii) Abutting the licensed premises of such licensees;
- (iv) Having limited pedestrian accessibility by use of a physical barrier, either on a permanent or temporary basis; and
- (v) Closed to vehicular traffic when used as a commons area.

Commons area may include any area of a public or private right-of-way if the area otherwise meets the requirements of this section; and

(b) Local governing body means the governing body of the city or village in which the entertainment district licensee is located.

**Source:** Laws 2012, LB1130, § 6; Laws 2016, LB1105, § 14.  
Effective date April 19, 2016.

**53-124 Licenses; types; classification; fees; where paid; license year.**

(1) At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in section 53-124.01 and, if the applicant is an individual, provide the applicant's social security number. The commission shall issue the types of licenses described in this section.

(2) There shall be an airline license, a boat license, a pedal-pub vehicle license, and a railroad license. The commission shall charge one dollar for each duplicate of an airline license, a pedal-pub vehicle license, or a railroad license.

(3)(a) There shall be a manufacturer's license for alcohol and spirits, for beer, and for wine. The annual fee for a manufacturer's license for beer shall be based on the barrel daily capacity as follows:

- (i) 1 to 100 barrel daily capacity, or any part thereof, tier one;
- (ii) 100 to 150 barrel daily capacity, tier two;
- (iii) 150 to 200 barrel daily capacity, tier three;



- (iv) 200 to 300 barrel daily capacity, tier four;
- (v) 300 to 400 barrel daily capacity, tier five;
- (vi) 400 to 500 barrel daily capacity, tier six;
- (vii) 500 barrel daily capacity, or more, tier seven.

(b) For purposes of this subsection, daily capacity means the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars.

(4) There shall be five classes of nonbeverage users' licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

(5) In lieu of a manufacturer's, a retailer's, or a wholesaler's license, there shall be a license to operate issued for a craft brewery, a farm winery, or a microdistillery.

(6)(a) There shall be six classes of retail licenses:

(i) Class A: Beer only, for consumption on the premises;

(ii) Class B: Beer only, for consumption off the premises, sales in the original packages only;

(iii) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(iv) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subdivision (6)(a)(vi) of this section and subsection (2) of section 53-123.04;

(v) Class I: Alcoholic liquor, for consumption on the premises; and

(vi) Class J: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, for a retail licensee whose annual gross revenue from the sale of alcohol does not exceed twenty percent of the licensee's total annual gross revenue from all retail sales.

(b) All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village.

(7) There shall be four types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, manufacture direct sales, and retail direct sales.

(8) There shall be two types of wholesale licenses: Alcoholic liquor and beer only. The annual fee shall be paid for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling the same product.

(9) The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the

amount of the annual license fee as fixed in section 53-124.01, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

**Source:** Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws 1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 53, § 3; Laws 1993, LB 183, § 9; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7; Laws 2009, LB355, § 3; Laws 2010, LB861, § 56; Laws 2010, LB867, § 2; Laws 2013, LB230, § 2; Laws 2015, LB330, § 16; Laws 2016, LB1105, § 15.  
Effective date April 19, 2016.

**53-124.01 Fees for annual licenses.**

(1) The fees for annual licenses finally issued by the commission shall be as provided in this section and section 53-124.

- (2) Airline license . . . . . \$100
- (3) Boat license . . . . . \$50
- (4) Manufacturer’s license:

Class	Fee - In Dollars
Alcohol and spirits	1,000
Beer - tier one	100
Beer - tier two	200
Beer - tier three	350
Beer - tier four	500
Beer - tier five	650
Beer - tier six	700
Beer - tier seven	800
Wine	250

(5) Nonbeverage user’s license:

Class	Fee - In Dollars
Class 1	5
Class 2	25
Class 3	50
Class 4	100
Class 5	250

## (6) Operator's license:

Class	Fee - In Dollars
Craft brewery	250
Farm winery	250
Microdistillery	250

(7) Pedal-pub vehicle license ... \$50

(8) Railroad license ..... \$100

## (9) Retail license:

Class	Fee - In Dollars
Class A	100
Class B	100
Class C	300
Class D	200
Class I	250
Class J	50

## (10) Shipping license:

Class	Fee - In Dollars
Manufacturer	1,000
Vintage wines	1,000
Manufacture direct sales	500
Retail direct sales	500

## (11) Wholesale license:

Class	Fee - In Dollars
Alcoholic liquor	750
Beer	500

**Source:** Laws 2010, LB861, § 57; Laws 2013, LB230, § 3; Laws 2015, LB330, § 17; Laws 2016, LB1105, § 16.  
Effective date April 19, 2016.

**53-124.11 Special designated license; issuance; procedure; fee.**

(1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, the holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, organization, or corporation enumerated in

subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of forty dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring an application or renewal fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, holders of manufacturer's licenses issued pursuant to subsection (2) of section 53-123.01, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder

of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

**Source:** Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8; Laws 2010, LB861, § 58; Laws 2016, LB1105, § 17. Effective date April 19, 2016.

**53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.**

(1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, a farm winery license, or a manufacturer's license issued under subsection (2) of section 53-123.01 may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, farm winery license, or manufacturer's license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify the clerk of the city or incorporated village in which such applicant is located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

**Source:** Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9; Laws 2010, LB861, § 59; Laws 2011, LB407, § 4; Laws 2016, LB1105, § 18.  
Effective date April 19, 2016.

### **53-125 Classes of persons to whom no license issued.**

No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a Nebraska resident and legally able to work in Nebraska, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima



facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

**Source:** Laws 1935, c. 116, § 28, p. 395; C.S.Supp.,1941, § 53-328; R.S.1943, § 53-125; Laws 1957, c. 230, § 1, p. 788; Laws 1959, c. 249, § 3, p. 864; Laws 1965, c. 318, § 7, p. 897; Laws 1967, c. 332, § 7, p. 887; Laws 1971, LB 752, § 2; Laws 1973, LB 111, § 6; Laws 1975, LB 414, § 2; Laws 1976, LB 204, § 3; Laws 1979, LB 224, § 1; Laws 1980, LB 848, § 5; Laws 1983, LB 213, § 10; Laws 1986, LB 871, § 3; Laws 1991, LB 344, § 30; Laws 1993, LB 121, § 319; Laws 1994, LB 1292, § 6; Laws 2010, LB788, § 2; Laws 2010, LB861, § 62; Laws 2016, LB1105, § 19. Effective date April 19, 2016.

**53-129 Retail, craft brewery, and microdistillery licenses; premises to which applicable.**

Retail, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application. For retail and microdistillery licenses, only one location shall be described in each license. For craft brewery licenses, up to five separate physical locations may be described in each license. After such license has been granted for particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by it, but in order to obtain such approval the retail, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

**Source:** Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12;

Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10; Laws 2010, LB861, § 63; Laws 2016, LB1105, § 20.

Effective date April 19, 2016.

**53-130 Licenses; manufacturers, wholesalers, railroads, airlines, boats, pedal-pub vehicles, and nonbeverage users; conditions on issuance; fees; renewal.**

(1) New licenses to manufacturers, wholesalers, railroads, airlines, boats, pedal-pub vehicles, and nonbeverage users of alcoholic liquor may be issued by the commission upon (a) written application in duplicate filed in the manner and on such forms as the commission prescribes and in which the applicant for a beer wholesale license sets forth the sales territory in Nebraska in which it is authorized by a manufacturer or manufacturers to sell their brand or brands and the name of such brand or brands, (b) receipt of bond, (c) payment in advance of the nonrefundable application fee of forty-five dollars and the license fee, and (d) such notice and hearing as the commission fixes by its own order.

(2) A notice of such application shall be served upon the manufacturer or manufacturers listed in any application for a beer wholesale license and upon any existing wholesaler licensed to sell the brand or brands in the described sales territory.

(3) A license so issued may be renewed without formal application upon payment of license fees and a renewal fee of forty-five dollars prior to or within thirty days after the expiration of the license. The payment of such fees shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application.

**Source:** Laws 1935, c. 116, § 81, p. 417; C.S.Supp.,1941, § 53-381; R.S.1943, § 53-130; Laws 1959, c. 247, § 1, p. 848; Laws 1959, c. 249, § 5, p. 865; Laws 1967, c. 332, § 8, p. 888; Laws 1971, LB 234, § 19; Laws 1972, LB 66, § 2; Laws 1991, LB 202, § 3; Laws 1991, LB 344, § 32; Laws 2000, LB 973, § 5; Laws 2010, LB861, § 64; Laws 2015, LB330, § 18.

**53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county; cigar shop; information required; renewal; fee.**

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application upon forms prescribed by the commission, including the information required by subsection (3) of this section for an application to operate a cigar shop;

(b) The license fee if under sections 53-124 and 53-124.01 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The nonrefundable application fee in the sum of four hundred dollars, except that the nonrefundable application fee for an application for a cigar shop shall be one thousand dollars.

(2) The commission shall notify the clerk of the city or village in which such license is sought or, if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall include one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receipt by mail or electronic delivery of such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

(3) For an application to operate a cigar shop, the application shall include proof of the cigar shop's annual gross revenue as requested by the commission and such other information as requested by the commission to establish the intent to operate as a cigar shop. The commission may adopt and promulgate rules and regulations to regulate cigar shops. The rules and regulations existing on August 1, 2014, applicable to cigar bars shall apply to cigar shops until amended or repealed by the commission.

(4) For renewal of a license under this section, a licensee shall file with the commission an application, the license fee as provided in subdivision (1)(b) of this section, and a renewal fee of forty-five dollars.

**Source:** Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4; Laws 2010, LB861, § 65; Laws 2011, LB407, § 5; Laws 2015, LB118, § 4; Laws 2015, LB330, § 19.

**53-131.01 License; application; form; contents; criminal history record check; verification; false statement; penalty.**

(1) The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he or she has resided within the State of Nebraska, (b) the particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a resident of Nebraska and legally able to work in Nebraska, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or

pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant, (e) a statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person, (f) a statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and (g) such other information as the commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(2) The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury, and upon conviction thereof the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

**Source:** Laws 1935, c. 116, § 99, p. 427; C.S.Supp.,1941, § 53-399; R.S.1943, § 53-142; Laws 1959, c. 249, § 13, p. 872; Laws 1979, LB 224, § 4; Laws 1980, LB 848, § 9; Laws 1991, LB 344, § 35; Laws 2003, LB 267, § 1; Laws 2016, LB1105, § 21.  
Effective date April 19, 2016.

### **53-132 Retail, craft brewery, or microdistillery license; commission; duties.**

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

- (a) The recommendation of the local governing body;
- (b) The existence of a citizens' protest made in accordance with section 53-133;
- (c) The existing population of the city, village, or county and its projected growth;
- (d) The nature of the neighborhood or community of the location of the proposed licensed premises;
- (e) The existence or absence of other retail licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;
- (f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;
- (g) The adequacy of existing law enforcement;
- (h) Zoning restrictions;
- (i) The sanitation or sanitary conditions on or about the proposed licensed premises; and
- (j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county except as otherwise provided in subsection (6) of this section. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

(6) Class J retail licensees shall not be subject to occupation taxes under subsection (4) of this section.

**Source:** Laws 1935, c. 116, § 83, p. 419; C.S.Supp.,1941, § 53-383; R.S.1943, § 53-132; Laws 1957, c. 228, § 3, p. 780; Laws 1957, c. 242, § 45, p. 856; Laws 1959, c. 246, § 1, p. 845; Laws 1959,

c. 247, § 2, p. 848; Laws 1959, c. 248, § 1, p. 857; Laws 1959, c. 249, § 7, p. 867; Laws 1976, LB 413, § 2; Laws 1981, LB 124, § 2; Laws 1984, LB 947, § 3; Laws 1986, LB 911, § 4; Laws 1988, LB 1089, § 14; Laws 1989, LB 780, § 9; Laws 1989, LB 781, § 10; Laws 1991, LB 344, § 36; Laws 1993, LB 183, § 12; Laws 1999, LB 267, § 9; Laws 2004, LB 485, § 21; Laws 2006, LB 845, § 2; Laws 2007, LB549, § 12; Laws 2010, LB861, § 66; Laws 2016, LB1105, § 22.

Effective date April 19, 2016.

**53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.**

(1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued;

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license; or

(d) An indication on the application that the location of a proposed retail establishment is within one hundred fifty feet of a church as described in subsection (2) of section 53-177 and a written request by the church for a hearing.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed or electronically delivered to the applicant, the local governing body, each individual protesting a license pursuant to subdivision (1)(b) of this section, and any church affected as described in subdivision (1)(d) of this section, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing or electronic delivery to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application. The commission shall not use electronic delivery with respect to an applicant, a protestor, or a church under this section without the consent of the recipient to electronic delivery.

**Source:** Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws



1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13; Laws 2010, LB861, § 67; Laws 2011, LB407, § 6; Laws 2015, LB330, § 20.

**53-134 Retail, craft brewery, microdistillery, and entertainment district licenses; city and village governing bodies; county boards; powers, functions, and duties.**

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, microdistillery, and entertainment district licenses:

(1) To cancel or revoke for cause retail, craft brewery, microdistillery, or entertainment district licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination. Any law enforcement officer who determines that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated shall report such violation in writing to the executive director of the commission (a) within thirty days after determining that such violation has occurred, (b) within thirty days after the conclusion of an ongoing police investigation, or (c) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and entertainment district license fees as provided in section 53-123.17 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, microdistillery licensee, or entertainment district licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of

the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

**Source:** Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 352, § 92; Laws 1988, LB 550, § 3; Laws 1988, LB 1089, § 15; Laws 1989, LB 780, § 10; Laws 1989, LB 781, § 12; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14; Laws 2010, LB861, § 68; Laws 2011, LB641, § 1; Laws 2012, LB1130, § 7.

**53-134.01 Class C license holder; limited bottling endorsement; application; fee; conditions of sale.**

(1) The holder of a Class C license may obtain a limited bottling endorsement for such license as prescribed in this section. The endorsement shall be issued for the same period and may be renewed in the same manner as the Class C license. A limited bottling endorsement may not be used in conjunction with a special designated license.

(2) A licensee desiring to obtain a limited bottling endorsement for a license shall file with the commission an application upon such forms as the commission prescribes and a fee of three hundred dollars payable to the commission.

(3) The holder of a limited bottling endorsement may sell beer for consumption off the licensed premises in sealed containers filled as provided in this subsection if:

(a) The sale occurs on the licensed premises of the licensee during the hours the licensee is authorized to sell beer;

(b) The licensee uses sanitary containers purchased by the customer from the licensee or exchanged for containers previously purchased by the customer from the licensee. The containers shall prominently display the endorsement holder's trade name or logo or some other mark that is unique to the endorsement holder and shall hold no more than thirty-two ounces;

(c) The licensee seals the container in a manner designed so that it is visibly apparent whether the sealed container has been tampered with or opened or seals the container and places the container in a bag designed so that it is visibly apparent whether the sealed container has been tampered with or opened; and

(d) The licensee provides a dated receipt to the customer and attaches a copy of the dated receipt to the sealed container or, if the sealed container is placed in a bag, to the bag.

**Source:** Laws 2015, LB330, § 14.

### **53-135 Retail licenses; automatic renewal; conditions.**

A retail license issued by the commission and outstanding may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission prior to or within thirty days after the expiration of the license. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form in triplicate original upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131.

**Source:** Laws 1935, c. 116, § 86, p. 421; C.S.Supp., 1941, § 53-386; R.S. 1943, § 53-135; Laws 1959, c. 249, § 10, p. 870; Laws 1983, LB 213, § 15; Laws 1984, LB 820, § 1; Laws 1988, LB 1089, § 16; Laws 1991, LB 344, § 40; Laws 2004, LB 485, § 26; Laws 2010, LB861, § 69; Laws 2015, LB330, § 21; Laws 2016, LB1105, § 23.

Effective date April 19, 2016.

### **53-136 Cigar shops; legislative findings; legislative intent.**

(1) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly

subjected to second-hand smoke. This exception poses a de minimis restriction on the public and employees given the limited number of cigar shops compared to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(2) The Legislature finds that (a) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (b) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (c) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(3) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(4) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

**Source:** Laws 2015, LB118, § 5.

**Cross References**

Nebraska Clean Indoor Air Act, see section 71-5716.

**53-137 Cigar shop license; prohibited acts; sign required; waiver signed by employee; form.**

(1) The holder of a cigar shop license shall not allow a person under twenty-one years of age to smoke or purchase any product in the cigar shop.

(2) The licensee shall post a sign on all entrances to the cigar shop, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

(3) Beginning November 1, 2015, the licensee shall provide to the commission a copy of a waiver signed prior to employment by each employee on a form prescribed by the commission. The waiver shall expressly notify the employee that he or she will be exposed to second-hand smoke, and the employee shall acknowledge that he or she understands the risks of exposure to second-hand smoke.

**Source:** Laws 2015, LB118, § 6.

**53-138 Pedal-pub vehicle license; activities authorized; licensee; duties.**

(1) The commission may issue a license to a person to operate a pedal-pub vehicle in this state. Each pedal-pub vehicle license shall expire on April 30 of each year. Each license shall be good throughout this state as a state license. Only one license shall be required for all pedal-pub vehicles operated in this state by the same owner. Each owner shall keep a duplicate of such license posted in each pedal-pub vehicle where alcoholic liquor is sold or consumed. No further license shall be required or tax levied by any county, city, or village for the privilege of operating a pedal-pub vehicle for the purpose of selling and allowing the consumption of alcoholic liquor while on or in a pedal-pub vehicle.

(2) The holder of a pedal-pub vehicle license may sell alcoholic liquor in individual drinks to customers who are twenty-one years of age or older to consume while they are on or in the pedal-pub vehicle and may allow such customers to consume alcoholic liquor not purchased from the licensee while the customers are on or in the pedal-pub vehicle. The licensee shall serve alcoholic liquor in opaque plastic containers that prominently display the licensee's trade name or logo or some other mark that is unique to the licensee under the licensee's pedal-pub vehicle license and shall require the use of such containers for the consumption of alcoholic liquor not purchased from the licensee.

(3) No customer shall take any open container of alcoholic liquor from the pedal-pub vehicle or consume the alcoholic liquor after leaving the pedal-pub vehicle. A customer may take unopened containers of alcoholic liquor not purchased from the licensee from the pedal-pub vehicle.

(4) The licensee shall not allow open containers of alcoholic liquor to leave the pedal-pub vehicle. The licensee shall be responsible for picking up and disposing of any litter or other waste or any personal property that originates from the pedal-pub vehicle and lands on public or private property.

**Source:** Laws 2015, LB330, § 15.

(f) TAX

**53-160 Tax on manufacturer and wholesaler; amount; exemption; duties of commission.**

(1) For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of thirty-one cents per gallon on all beer; ninety-five cents per gallon for wine, except for wines produced and released from bond in farm wineries; six cents per gallon for wine produced and released from bond in farm wineries; and three dollars and seventy-five cents per gallon on alcohol and spirits manufactured and sold

by such manufacturer or shipped for sale in this state by such wholesaler in the course of such business. The gallonage tax imposed by this subsection shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of alcoholic liquor shall be exempt from the payment of the gallonage tax on such alcoholic liquor upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such alcoholic liquor was manufactured in this state but shipped out of the state for sale and consumption outside this state.

(3) Dry wines or fortified wines manufactured or shipped into this state solely and exclusively for sacramental purposes and uses shall not be subject to the gallonage tax.

(4) The gallonage tax shall not be imposed upon any alcoholic liquor, whether manufactured in or shipped into this state, when sold to a licensed nonbeverage user for use in the manufacture of any of the following when such products are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, food products, and confections or candy; scientific, industrial, and chemical products, except denatured alcohol; or products for scientific, chemical, experimental, or mechanical purposes.

(5) The gallonage tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The gallonage tax shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(7) The commission shall collect the gallonage tax and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any alcoholic liquor manufactured in or shipped into this state is sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or wholesaler shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under the Nebraska Liquor Control Act. The net proceeds of all revenue arising under this section shall be credited to the General Fund.

**Source:** Laws 1935, c. 116, § 50, p. 405; Laws 1939, c. 66, § 1, p. 273; Laws 1941, c. 106, § 1, p. 426; C.S.Supp.,1941, § 53-350; R.S. 1943, § 53-160; Laws 1947, c. 189, § 1, p. 624; Laws 1951, c. 172, § 1, p. 660; Laws 1963, c. 312, § 1, p. 940; Laws 1965, c. 320, § 1, p. 911; Laws 1965, c. 319, § 3, p. 909; Laws 1965, c. 318, § 9, p. 898; Laws 1972, LB 66, § 3; Laws 1977, LB 254, § 1; Laws 1977, LB 220, § 1; Laws 1979, LB 260, § 1; Laws 1981, LB 129, § 1; Laws 1985, LB 279, § 9; Laws 1985, LB 280, § 1; Laws 1988, LB 901, § 3; Laws 1988, LB 1089, § 22; Laws 1991, LB 344, § 44; Laws 2003, LB 283, § 1; Laws 2003, LB 759, § 1; Laws 2012, LB824, § 6.

**53-160.03 Beer-related crop; tax credit; calculation; application; contents; approval; notice.**



(1) The Legislature finds that encouraging manufacturers of beer to use beer-related crops grown in this state in their manufacturing operations stimulates the creation of jobs and investments in small communities in this state, encourages the use of lands upon which beer-related crops may be grown, and provides tax revenue to the state which would not otherwise be realized. It is the intent of the Legislature to encourage the use of such beer-related crops by providing a nonrefundable tax credit as provided in this section.

(2) For purposes of this section, beer-related crop means barley or hops.

(3) A nonrefundable credit against the tax imposed in section 53-160 shall be allowed to any manufacturer of beer if at least ten percent of the beer-related crops used by such manufacturer in the previous calendar year were grown in this state. The credit shall be an amount equal to the percentage specified in subsection (4) of this section multiplied by the total amount of tax paid under section 53-160 in the previous calendar year on the first twenty thousand barrels of beer sold by such manufacturer.

(4) The percentage used to determine the credit shall be as follows:

(a) If at least ten percent but less than forty percent of the beer-related crops used by the manufacturer in the previous calendar year were grown in this state, the percentage used to determine the credit shall be fifteen percent;

(b) If at least forty percent but less than seventy percent of the beer-related crops used by the manufacturer in the previous calendar year were grown in this state, the percentage used to determine the credit shall be twenty-five percent; and

(c) If at least seventy percent of the beer-related crops used by the manufacturer in the previous calendar year were grown in this state, the percentage used to determine the credit shall be thirty-five percent.

(5) A manufacturer of beer shall apply for the credit to the commission on a form prescribed by the commission. The application shall be submitted on or before January 25 of each year and shall contain the following information:

(a) The name of the manufacturer;

(b) The total number of barrels of beer sold and the total amount of tax paid under section 53-160 during the previous calendar year;

(c) The percentage of beer-related crops used by the manufacturer in the previous calendar year that were grown in this state; and

(d) Such other information as required by the commission to verify that the manufacturer is qualified to receive the credit allowed under this section and to calculate the amount of the credit.

(6) If the manufacturer of beer qualifies for the credit, the commission shall approve the application and notify the manufacturer of the amount of the credit approved. The manufacturer may then claim the credit on the reports due each month under section 53-164.01 as an offset against the taxes due pursuant to such reports until the credit is fully utilized or until the following December 31, whichever occurs first.

**Source:** Laws 2015, LB330, § 22.

**53-162 Alcoholic liquor shipped from another state; tax imposed.**

For the purpose of raising revenue, a tax is imposed upon persons holding a shipping license issued pursuant to subsection (4) or (5) of section 53-123.15

who ship alcoholic liquor to individuals pursuant to section 53-192 and for which the required taxes in the state of purchase or this state have not been paid. The tax, if due, shall be paid by the holder of the shipping license issued pursuant to subsection (4) or (5) of section 53-123.15. The amount of the tax shall be imposed as provided in section 53-160. The tax shall be collected by the commission, except that the tax shall not be due until December 31 of the year in which the purchase was made. The tax shall be delinquent if unpaid within twenty-five days after December 31. The revenue from the tax shall be credited to the General Fund. The commission shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2000, LB 973, § 2; Laws 2001, LB 671, § 3; Laws 2013, LB230, § 4.

**53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.**

Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c)(i) Except as provided in subdivision (ii) of this subdivision, farm winery producers which paid less than one thousand dollars of excise taxes pursuant to section 53-160 for the previous calendar year and which will pay less than one thousand dollars of excise taxes pursuant to section 53-160 for the current calendar year shall, on or before the twenty-fifth day of the calendar month following the end of the year in which wine was packaged and released from bond, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged and released from bond by such producer during the preceding calendar year; and

(ii) Farm winery producers which paid one thousand dollars or more of excise taxes pursuant to section 53-160 for the previous calendar year or which become liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged and released from bond, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged and released from bond by such producer during the preceding calendar month. A farm winery producer which becomes liable for one thousand dollars or more of excise taxes pursuant to section

53-160 during the current calendar year shall also pay such excise taxes immediately;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was released from bond for sale, submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was released from bond for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under sections 53-124 and 53-124.01, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission

from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

**Source:** Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws 1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16; Laws 2010, LB861, § 73; Laws 2012, LB824, § 7.

#### (h) KEG SALES

#### **53-167.02 Keg sales; requirements; keg identification number; violation; penalty.**

(1) When any person licensed to sell alcoholic liquor at retail sells alcohol for consumption off the premises in a container with a liquid capacity of five or more gallons or eighteen and ninety-two hundredths or more liters, the seller shall record the date of the sale, the keg identification number, the purchaser's name and address, and the number of the purchaser's motor vehicle operator's license, state identification card, or military identification, if such military identification contains a picture of the purchaser, together with the purchaser's signature. Such record shall be on a form prescribed by the commission and shall be kept by the licensee at the retail establishment where the purchase was made for not less than six months.

(2) The commission shall adopt and promulgate rules and regulations which require the licensee to place a label on the alcohol container, which label shall at least contain a keg identification number and shall be on a form prescribed by the commission. Such label shall be placed on the keg at the time of retail sale. The licensee shall purchase the forms referred to in this section from the commission. The cost incurred to produce and distribute such forms shall be reasonable and shall not exceed the reasonable and necessary costs of producing and distributing the forms. Any money collected by the commission relating to the sale of such forms shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) The keg identification number for each container shall be registered with the commission. The records kept pursuant to this section shall be available for inspection by any law enforcement officer during normal business hours or at

any other reasonable time. Any person violating this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1993, LB 332, § 3; Laws 2015, LB330, § 23.

**53-167.03 Keg identification number; prohibited acts; violation; penalty; deposit.**

(1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a container described in section 53-167.02 or is in possession of a container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing alcohol for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the keg identification number has been unlawfully tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

**Source:** Laws 1993, LB 332, § 4; Laws 2002, LB 1126, § 5; Laws 2007, LB573, § 10; Laws 2015, LB330, § 24.

(i) PROHIBITED ACTS

**53-168.06 General prohibition; exceptions.**

No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish, or possess any alcoholic liquor for beverage purposes except as specifically provided in the Nebraska Liquor Control Act. Nothing in the act shall prevent (1) the possession of alcoholic liquor legally obtained as provided in the act for the personal use of the possessor and his or her family and guests; (2) the making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests; (3) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his or her profession, any hospital or other institution caring for the sick and diseased persons from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or other institution, or any drug store employing a licensed pharmacist from possessing or using alcoholic liquor in the compounding of prescriptions of licensed physicians; (4) the possession and dispensation of alcoholic liquor by an authorized representative of any religion on the premises of a place of worship, for the purpose of conducting any bona fide religious rite, ritual, or ceremony; (5) persons who are sixteen years old or older from carrying alcoholic liquor from licensed establishments when they are accompanied by a person not a minor; (6) persons who are sixteen years old or older from handling alcoholic liquor containers and alcoholic liquor in the course of their employment; (7) persons who are sixteen years old or older from removing and disposing of alcoholic liquor containers for the convenience of the employer and customers in the course of their employment; (8) persons who

are sixteen years old or older from completing a transaction for the sale of alcoholic liquor in the course of their employment if they are not handling or serving alcoholic liquor; or (9) persons who are nineteen years old or older from serving or selling alcoholic liquor in the course of their employment.

**Source:** Laws 1935, c. 116, § 1, p. 374; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-102; Laws 1971, LB 666, § 1; Laws 1978, LB 386, § 2; Laws 1980, LB 221, § 1; Laws 1985, LB 359, § 1; R.S.1943, (1988), § 53-102; Laws 1991, LB 344, § 52; Laws 1995, LB 874, § 2; Laws 2001, LB 114, § 3; Laws 2016, LB1105, § 24.  
Effective date April 19, 2016.

**53-169 Manufacturer or wholesaler; craft brewery, manufacturer, or micro-distillery licensee; limitations.**

(1) Except as provided in subsection (2) of this section, no manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section does not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 and the holder of a manufacturer's license shall have the privileges and duties listed in section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license or of a manufacturer's license issued pursuant to section 53-123.01 to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 3, p. 574; Laws 1961, c. 258, § 5, p. 765; Laws 1971, LB 751, § 5; Laws 1981, LB 483, § 3; Laws 1985, LB 183, § 5; Laws 1985, LB 279, § 11; Laws 1988, LB 1089, § 24; Laws 1991, LB 344, § 54; Laws 1996, LB 750, § 11; Laws 2007, LB549, § 17; Laws 2016, LB1105, § 25.  
Effective date April 19, 2016.

**53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions; exception.**

(1)(a) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or



affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03.

(b) Except as otherwise provided in subsection (2) of this section, no manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor for distribution and sale within this state shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of a wholesaler holding an alcoholic liquor wholesale license under section 53-123.02 or a beer wholesale license under section 53-123.03 is located, established, conducted, or operated in whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

(2) A manufacturer of beer may acquire an ownership interest in a beer wholesaler, for a period not to exceed two years, upon the death or bankruptcy of the beer wholesaler with which the manufacturer is doing business or upon the beer wholesaler with which the manufacturer is doing business becoming ineligible to hold a license under section 53-125.

**Source:** Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3; Laws 2010, LB861, § 74; Laws 2011, LB279, § 1.

**53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery, manufacturer, or microdistillery licensee; limitations.**

No person licensed as a wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a manufacturer shall be permitted to receive any retail license at the same time except as set forth in subsection (2) of section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a manufacturer's license issued pursuant to such subsection to engage in the wholesale distribution of alcoholic liquor. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a

microdistillery license to engage in the wholesale distribution of alcoholic liquor.

**Source:** Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969, c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18; Laws 2016, LB1105, § 26.  
Effective date April 19, 2016.

**53-173 Powdered alcohol; prohibited acts; penalties; effect on license.**

(1) Except as otherwise provided in subsection (5) of this section, a person shall not purchase, sell, offer to sell, use, or possess with intent to sell powdered alcohol.

(2) A person holding a license under the Nebraska Liquor Control Act shall be subject to having the license suspended, canceled, or revoked pursuant to the act for a violation of this section.

(3) Any person, other than a person licensed under the act, who sells a powdered alcohol product shall be guilty of a Class I misdemeanor.

(4) Any person knowingly or intentionally possessing powdered alcohol shall:

(a) For the first offense, be guilty of an infraction, receive a citation, and be fined three hundred dollars;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(5) This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.

**Source:** Laws 2015, LB330, § 8.

**53-175 Liquor; acquisition from other than licensed dealer; when unlawful.**

It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act unless within the specific exemptions or exceptions provided in the act. No licensed retailer of alcoholic liquor shall purchase such liquor other than from a licensed wholesaler who has his or her place of business within this state. Nothing in this section shall prohibit the sale or exchange among collectors of commemorative bottles or uniquely designed decanters which contain alcoholic liquor.

**Source:** Laws 1935, c. 116, § 32, p. 398; C.S.Supp.,1941, § 53-332; R.S.1943, § 53-175; Laws 1988, LB 1089, § 27; Laws 1989, LB 154, § 4; Laws 1991, LB 344, § 58; Laws 2016, LB1105, § 27.  
Effective date April 19, 2016.

**53-177 Sale at retail; restrictions as to locality.**

(1) Except as otherwise provided in subsection (2) of this section, no license shall be issued for the sale at retail of any alcoholic liquor within one hundred fifty feet of any church, school, hospital, or home for indigent persons or for veterans and their wives or children. This prohibition does not apply (a) to any location within such distance of one hundred fifty feet for which a license to sell alcoholic liquor at retail has been granted by the commission for two years continuously prior to making of application for license, (b) to hotels offering restaurant service, to regularly organized clubs, or to restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on, if such place of business so exempted was established for such purposes prior to May 24, 1935, or (c) to a college or university in the state which is subject to section 53-177.01.

(2) If a proposed location for the sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in section 53-133 if the affected church submits a written request for a hearing.

**Source:** Laws 1935, c. 116, § 35, p. 399; C.S.Supp.,1941, § 53-335; R.S.1943, § 53-177; Laws 1947, c. 189, § 2, p. 626; Laws 1965, c. 322, § 1, p. 914; Laws 1999, LB 267, § 13; Laws 2009, LB232, § 3; Laws 2010, LB861, § 76; Laws 2011, LB407, § 7; Laws 2015, LB330, § 25.

**53-177.01 Sale for consumption on premises near campus of college or university; restrictions; commission; waiver; application; contents; written approval of governing body of college or university.**

(1) No alcoholic liquor shall be sold for consumption on the premises within three hundred feet from the campus of any college or university in the state, except that this section:

(a) Does not prohibit a nonpublic college or university from contracting with an individual or corporation holding a license to sell alcoholic liquor at retail for the purpose of selling alcoholic liquor at retail on the campus of such college or university at events sanctioned by such college or university but does prohibit the sale of alcoholic liquor at retail by such licensee on the campus of such nonpublic college or university at student activities or events; and

(b) Does not prohibit sales of alcoholic liquor by a community college culinary education program pursuant to section 53-124.15.

(2) Except as otherwise provided in subsection (4) of this section, the commission may waive the three-hundred-foot restriction in subsection (1) of this section taking into consideration one or more of the following:

(a) The impact of retail sales of alcoholic liquor for consumption on the premises on the academic mission of the college or university;

(b) The impact on students and prospective students if such sales were permitted on or near campus;

(c) The impact on economic development opportunities located within or in proximity to the campus; and

(d) The waiver would likely reduce the number of applications for special designated licenses requested by the college or university or its designee.

(3) To apply for a waiver under this section, the applicant shall submit a written application to the commission. The commission shall notify the governing body of the affected college or university when the commission receives an application for a waiver. The application shall include:

- (a) The address of the location for which the waiver is requested;
- (b) The name and type of business for which the waiver is requested; and

(c) A description of the justification for the waiver explaining how the proposed location complies with the findings prescribed in subsection (2) of this section.

(4) The commission shall not waive the three-hundred-foot restriction in subsection (1) of this section without written approval from the governing body of the college or university or its designee if the physical location of the property which is the subject of the requested waiver is (a) surrounded by property owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university or (b) adjacent to property on two or more sides owned by the college or university including any public or private easement, street, or right-of-way adjacent to the property owned by the college or university.

**Source:** Laws 2011, LB407, § 8.

#### **53-178 Sale at retail; forbidden in dwelling or lodging house; exceptions.**

Except in the case of hotels and clubs, no alcoholic liquor shall be manufactured or sold at retail or wholesale upon any premises which have any access which leads from such premises to any other portion of the same building or structure used for dwelling or lodging purposes and permitted to be used or kept accessible for use by the public. This section does not prevent any connection between such premises and such other portion of the building or structure which is used only by the licensee or his or her family and personal guests.

**Source:** Laws 1935, c. 116, § 36, p. 399; C.S.Supp.,1941, § 53-336; R.S.1943, § 53-178; Laws 2016, LB1105, § 28.  
Effective date April 19, 2016.

#### **53-179 Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.**

(1) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m., except that the local governing body of any city or village with respect to area inside the corporate limits of such city or village, or the county board with respect to area outside the corporate limits of any city or village, may by ordinance or resolution (a) require closing prior to 1 a.m. on any day, (b) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day, (c) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day, or (d) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or

dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, and permit retail sale of alcoholic liquor for consumption off the premises later than 1 a.m. and prior to 2 a.m. on any day.

(2) Except as provided for and allowed by ordinance of a local governing body applicable to area inside the corporate limits of a city or village or by resolution of a county board applicable to area inside such county and outside the corporate limits of any city or village, no alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6 a.m. Sunday and 1 a.m. Monday. This subsection shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(3) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of fifteen minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

(4) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

**Source:** Laws 1935, c. 116, § 37, p. 399; Laws 1941, c. 107, § 1, p. 429; C.S.Supp.,1941, § 53-337; R.S.1943, § 53-179; Laws 1955, c. 202, § 2, p. 579; Laws 1957, c. 232, § 1, p. 791; Laws 1963, c. 310, § 12, p. 934; Laws 1963, Spec. Sess., c. 5, § 4, p. 82; Laws 1965, c. 318, § 10, p. 900; Laws 1967, c. 336, § 2, p. 902; Laws 1974, LB 681, § 7; Laws 1976, LB 204, § 6; Laws 1978, LB 386, § 8; Laws 1979, LB 514, § 1; Laws 1981, LB 217, § 1; Laws 1983, LB 213, § 19; Laws 1991, LB 344, § 61; Laws 1991, LB 354, § 1; Laws 2004, LB 485, § 29; Laws 2010, LB861, § 77; Laws 2012, LB861, § 1; Laws 2014, LB863, § 24.

### **53-180 Prohibited acts relating to minors and incompetents.**

No person shall sell, furnish, give away, exchange, or deliver, or permit the sale, gift, or procuring of, any alcoholic liquors to or for any minor or to any person who is mentally incompetent.

**Source:** Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(1), p. 664; Laws 1980, LB 848, § 17; Laws 2011, LB667, § 21.

#### **Cross References**

City of the second class may prohibit sale to minors, see section 17-135.

Minor Alcoholic Liquor Liability Act, see section 53-401.

### **53-180.05 Prohibited acts relating to minors and incompetents; violations; penalties; possible alcohol overdose; actions authorized; false identification; penalty; law enforcement agency; duties.**

(1) Except as provided in subsection (2) of this section, any person who violates section 53-180 shall be guilty of a Class I misdemeanor.

(2) Any person who knowingly and intentionally violates section 53-180 shall be guilty of a Class IIIA felony and serve a mandatory minimum of at least

thirty days' imprisonment as part of any sentence he or she receives if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

(3) Any person who violates any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

(4)(a) Except as otherwise provided in subdivision (b) of this subsection, any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor.

(b) Subdivision (a) of this subsection shall not apply if the person:

(i) Requested emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon as the emergency situation is apparent after such violation of section 53-180.02;

(ii) Was the first person to make a request for medical assistance under subdivision (b)(i) of this subsection as soon as the emergency situation is apparent after such violation of section 53-180.02; and

(iii) When emergency medical assistance was requested for the possible alcohol overdose of another person:

(A) Remained on the scene until the medical assistance arrived; and

(B) Cooperated with medical assistance and law enforcement personnel.

(c) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance with subdivision (b) of this subsection.

(5) Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(6) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(7) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (6) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

**Source:** Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(6), p. 664; Laws 1963, c. 313, § 2, p. 943; Laws 1969, c. 444, § 1, p. 1482; Laws 1973, LB 25, § 3; Laws 1977, LB 40, § 315; Laws 1982, LB 869, § 1; Laws 1984, LB 56, § 4; Laws 1985, LB 493, § 2; Laws 1989, LB 440, § 1; Laws 1991, LB 454, § 1; Laws 2001, LB 114, § 6; Laws 2010, LB258, § 2; Laws 2011, LB667, § 22; Laws 2015, LB439, § 1.

**53-180.06 Documentary proof of age; separate book; record; contents.**



(1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, state identification card, military identification card, alien registration card, or passport.

(2) Every holder of a retail license may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

**Source:** Laws 1969, c. 437, § 1, p. 1467; Laws 1991, LB 454, § 2; Laws 1999, LB 267, § 14; Laws 2013, LB173, § 1.

**53-181 Person eighteen years of age or younger; penalty; copy of abstract to Director of Motor Vehicles; possible alcohol overdose; actions authorized.**

(1) Except as otherwise provided in subsection (3) of this section, the penalty for violation of section 53-180.02 by a person eighteen years of age or younger shall be as follows:

(a) If the person convicted or adjudicated of violating such section has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, such person is guilty of a Class III misdemeanor and the court may, as a part of the judgment of conviction or adjudication, impound any such licenses or permits for thirty days and require such person to attend an alcohol education class;

(ii) For a second offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend an alcohol education class; and

(iii) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating such section does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend an alcohol education class;

(ii) For a second offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than

twenty hours and no more than forty hours of community service and to attend an alcohol education class; and

(iii) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

(2) A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04.

(3) Subsection (1) of this section shall not apply if the person:

(a) Requested emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon as the emergency situation is apparent after such violation of section 53-180.02;

(b) Was the first person to make a request for medical assistance under subdivision (a) of this subsection as soon as the emergency situation is apparent after such violation of section 53-180.02; and

(c) When emergency medical assistance was requested for the possible alcohol overdose of another person:

(i) Remained on the scene until the medical assistance arrived; and

(ii) Cooperated with medical assistance and law enforcement personnel.

(4) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance with subsection (3) of this section.

**Source:** Laws 2010, LB258, § 3; Laws 2015, LB439, § 2.

#### Cross References

Motor Vehicle Operator's License Act, see section 60-462.

### **53-183 Sale on credit or for goods or services forbidden; exceptions.**

(1) No person shall sell or furnish alcoholic liquor at retail to any person on credit, on a passbook, on an order on a store, in exchange for any goods, wares, or merchandise, or in payment for any services rendered, and if any person extends credit for any such purpose, the debt thereby attempted to be created shall not be recoverable at law.

(2) Nothing in this section shall prevent:

(a) Any club holding a Class C license from permitting checks or statements for alcoholic liquor to be signed by members or bona fide guests of members and charged to the account of such members or guests in accordance with the bylaws of such club;

(b) Any hotel or restaurant holding a retail license from permitting checks or statements for liquor to be signed by regular guests residing at such hotel or eating at such restaurant and charged to the accounts of such guests; or

(c) Any licensed retailer engaged in the sale of wine or distilled spirits from issuing tasting cards to customers.

**Source:** Laws 1935, c. 116, § 40, p. 401; C.S.Supp.,1941, § 53-340; R.S.1943, § 53-183; Laws 1959, c. 252, § 1, p. 883; Laws 1978, LB 386, § 10; Laws 1991, LB 344, § 64; Laws 2011, LB314, § 1; Laws 2014, LB863, § 25.

**53-186 Consumption of liquor on public property; forbidden; exceptions; license authorized.**

(1) Except as provided in subsection (2) of this section or section 60-6,211.08, it shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property.

(2) The commission may issue licenses for the sale of alcoholic liquor at retail (a) on lands owned by public power districts, public power and irrigation districts, the Bureau of Reclamation, or the Corps of Army Engineers or (b) for locations within or on structures on land owned by the state, cities, or villages or on lands controlled by airport authorities. The issuance of a license under this subsection shall be subject to the consent of the local governing body having jurisdiction over the site for which the license is requested as provided in the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 44, p. 402; C.S.Supp.,1941, § 53-344; R.S.1943, § 53-186; Laws 1953, c. 182, § 5, p. 576; Laws 1967, c. 332, § 12, p. 891; Laws 1993, LB 235, § 45; Laws 1999, LB 585, § 1; Laws 2011, LB281, § 1.

**53-186.01 Consumption of liquor in public places; license required; exceptions; violations; penalty.**

(1) It shall be unlawful for any person owning, operating, managing, or conducting any dance hall, restaurant, cafe, or club or any place open to the general public to permit or allow any person to consume alcoholic liquor upon the premises except as permitted by a license issued for such premises pursuant to the Nebraska Liquor Control Act.

(2) It shall be unlawful for any person to consume alcoholic liquor in any dance hall, restaurant, cafe, or club or any place open to the general public except as permitted by a license issued for such premises pursuant to the act.

(3) This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages or to limousines or buses operated under section 60-6,211.08.

(4) Any person violating subsection (1) of this section shall, upon conviction thereof, be subject to the penalties contained in section 53-1,100.

(5) Any person violating subsection (2) of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1965, c. 318, § 1, p. 885; Laws 1978, LB 386, § 11; Laws 1991, LB 344, § 67; Laws 1991, LB 454, § 3; Laws 2011, LB281, § 2.

**53-187 Nonbeverage licensee forbidden to give or sell alcoholic liquor; violation; penalty.**

No nonbeverage user shall sell, give away, or otherwise dispose of any alcoholic liquor, purchased under his or her license as such nonbeverage user, in any form fit for beverage purposes. Any nonbeverage user who violates this section shall pay to the commission, for the use of the General Fund, the sum of three dollars and seventy-five cents for each gallon of alcoholic liquor so diverted, and in addition thereto shall be subject to the penalties provided in section 53-1,100.

**Source:** Laws 1935, c. 116, § 57, p. 408; Laws 1939, c. 64, § 2, p. 271; C.S.Supp.,1941, § 53-357; R.S.1943, § 53-187; Laws 1959, c. 250, § 3, p. 877; Laws 1965, c. 319, § 4, p. 910; Laws 2016, LB1105, § 29.  
Effective date April 19, 2016.

**53-188 Repealed. Laws 2014, LB 863, § 31.****53-189 Repealed. Laws 2014, LB 863, § 31.****53-190 Premises violating law declared common nuisances.**

All places where alcoholic liquor is sold or consumed in violation of any provision of section 53-186.01 shall be taken and held and are declared to be common nuisances and may be abated as such in the manner provided in the Nebraska Liquor Control Act.

**Source:** Laws 1935, c. 116, § 61, p. 409; C.S.Supp.,1941, § 53-361; R.S.1943, § 53-190; Laws 1965, c. 318, § 11, p. 901; Laws 2014, LB863, § 26.

**53-191 Repealed. Laws 2014, LB 863, § 31.****53-194.03 Transportation of liquor into state; forbidden; when; penalty.**

(1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to transport, import, bring, ship, or cause to be transported, imported, brought, or shipped into the State of Nebraska for the personal use of the possessor, his or her family, or guests a quantity of alcoholic liquor in excess of nine liters in any one calendar month.

(2) Subsection (1) of this section does not apply to a person importing alcoholic liquor from a holder of a retail direct sales shipping license or its equivalent, which alcoholic liquor is for personal use or for use by such person's family or guests, if the total amount imported by such person in any one calendar year does not exceed one hundred eight liters.

(3) Alcoholic liquor transported, imported, brought, or shipped into the State of Nebraska in violation of this section shall be seized by the commission and disposed of in the manner provided for contraband. Any person violating this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1985, LB 359, § 4; Laws 1994, LB 1292, § 9; Laws 2016, LB1105, § 30.  
Effective date April 19, 2016.

**53-197 Violations; peace officer; duties; neglect of duty; penalty.**

(1) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall make complaint against the person so offending within their respective jurisdictions to the proper court, and for every neglect or refusal so to do, every such officer shall be guilty of a Class V misdemeanor.

(2) Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall report such offense in writing to the executive director of the commission (a) within thirty days after such offense is committed, (b) within thirty days after such sheriff, deputy sheriff, police officer, marshal, or deputy marshal is informed of such offense, (c) within thirty days after the conclusion of an ongoing police investigation, or (d) within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

**Source:** Laws 1935, c. 116, § 75, p. 412; C.S.Supp.,1941, § 53-375; R.S.1943, § 53-197; Laws 1972, LB 1032, § 257; Laws 1977, LB 40, § 318; Laws 1988, LB 1030, § 44; Laws 2011, LB641, § 2.

#### (j) PENALTIES

##### **53-1,100 Violations; general penalties.**

(1) Any person (a) who imports alcoholic liquor for distribution as a wholesaler or distributes or sells alcoholic liquor at any place within the state without having first obtained a valid license to do so under the Nebraska Liquor Control Act, (b) who manufactures alcoholic liquor other than spirits within the state without having first obtained a valid license to do so under the act, (c) who makes any false statement or otherwise violates any of the provisions of the act in obtaining any license under the act, (d) who, having obtained a license under the act, violates any of the provisions of the act with respect to the manufacture, possession, distribution, or sale of alcoholic liquor or with respect to the maintenance of the licensed premises, or (e) who violates any other provision of the act for which a penalty is not otherwise provided, shall for a first offense be guilty of a Class IV misdemeanor and for a second or subsequent offense shall be guilty of a Class II misdemeanor.

(2) Any person who manufactures spirits at any place within the state without having first obtained a valid license to do so under the act shall be guilty of a Class I misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

(3) Each day any person engages in business as a manufacturer, wholesaler, or retailer in violation of the act shall constitute a separate offense.

(4) In any prosecution in which a person is charged with an offense arising out of the failure to obtain a valid license as provided in subdivision (1)(a) or (b) or subsection (2) of this section, evidence of the failure of the accused to produce such license upon demand shall constitute prima facie proof that a license has not been issued by the commission to such person.

**Source:** Laws 1935, c. 116, § 63, p. 409; C.S.Supp.,1941, § 53-363; R.S.1943, § 53-1,100; Laws 1945, c. 128, § 1, p. 411; Laws 1949,

c. 170, § 1, p. 450; Laws 1977, LB 40, § 319; Laws 1991, LB 344, § 70; Laws 2016, LB1105, § 31.  
Effective date April 19, 2016.

**53-1,104 Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.**

(1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02;

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the



date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. The commission shall remit all funds collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(6) Recognizing that suspension of the license of a licensee domiciled outside of the state poses unique enforcement difficulties, the commission may, at its discretion, mandate that a licensee domiciled outside of the state pay the cash penalty found in subsection (2) of this section rather than serve the suspension.

**Source:** Laws 1935, c. 116, § 105, p. 429; C.S.Supp.,1941, § 53-3,105; R.S.1943, § 53-1,104; Laws 1977, LB 40, § 320; Laws 1980, LB 848, § 20; Laws 1991, LB 344, § 71; Laws 1991, LB 586, § 2; Laws 1999, LB 267, § 15; Laws 2000, LB 973, § 9; Laws 2003, LB 205, § 3; Laws 2010, LB861, § 78; Laws 2011, LB311, § 1.

#### (k) PROSECUTION AND ENFORCEMENT

##### **53-1,111 Search warrants; search and seizure of property; sale; disposition of proceeds; arrests.**

Upon the issuance of any search warrant pursuant to section 53-1,108, it shall be the duty of the officers executing the same to enter the house, building, premises, boat, vehicle, receptacle, or other place described, either in the daytime or nighttime, by force if necessary and to remove and confiscate any alcoholic liquor manufactured, possessed, or kept for sale contrary to the terms of the Nebraska Liquor Control Act and any machinery, equipment, or material used in connection therewith and to hold such property until all prosecution arising out of such search and seizure shall have ended and determined. It shall be the duty of the officers executing such search warrant to arrest any person or persons found using or in possession or control of such alcoholic liquor, articles, or things. All alcoholic liquor unlawfully manufactured, stored, kept, sold, or otherwise disposed of, and the containers thereof, and all equipment used or fit for use in the manufacture or production of the same which are found at or about any still or outfit for the unlawful manufacture of alcoholic liquor on unlicensed premises are hereby declared contraband, and no right of property shall be or exist in any person owning, furnishing, or possessing any such property, liquor, material, or equipment, but all such property, articles, and things, including alcoholic liquor, shall be sold upon an order of the court as provided in section 53-1,113, and the proceeds thereof shall be disposed of in

the manner provided for the disposition of license money under the Constitution of Nebraska.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,111; Laws 1994, LB 859, § 18; Laws 2015, LB330, § 26.

**53-1,113 Search warrant; sale of property seized; procedure; destruction, when required.**

(1) It shall be the duty of the officer who has seized and is holding any of the property mentioned in section 53-1,111 to make application to the court on final determination of any prosecution arising under such search and seizure, and in which such prosecution has been commenced or prosecuted, for an order to sell such property. The court, if satisfied that the property so seized and held was at the time of its seizure being kept or used, or was fit for use in the unlawful manufacture or production of alcoholic liquor, shall make an order that (a) the commission dispose of any alcoholic liquor in accordance with the Nebraska Liquor Control Act and (b) any other property and effects be sold by such officer subject to the time, place, manner, and notice of such sale set by the order.

(2) Nothing contained in the Nebraska Liquor Control Act shall be considered to authorize the sale of any alcoholic liquor unlawfully manufactured fit for human consumption which comes into the possession of any officer or the commission by seizure, confiscation, or forfeiture under the provisions of the act without the payment of all taxes and inspection fees required by the laws of this state and of the United States, and all such unlawfully manufactured alcoholic liquor which is unfit for human consumption shall be destroyed.

(3) The commission shall destroy alcoholic liquor which is unfit for human consumption and may sell alcoholic liquor, when directed by order of the court, at the time, place, and manner the commission determines to be in the public interest and subject to the taxes and inspection fees required by the laws of this state and of the United States.

**Source:** Laws 1935, c. 116, § 80, p. 416; C.S.Supp.,1941, § 53-380; R.S.1943, § 53-1,113; Laws 1994, LB 859, § 19; Laws 2015, LB330, § 27.

**53-1,120.01 County resolution or city ordinance prohibiting smoking; not applicable to cigar shops.**

No county resolution or city ordinance that prohibits smoking in indoor areas shall apply to cigar shops.

**Source:** Laws 2009, LB355, § 5; Laws 2015, LB118, § 7.

### ARTICLE 3

#### NEBRASKA GRAPE AND WINERY BOARD

Section

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

**53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.**

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. 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 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7; Laws 2013, LB230, § 5.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 5

### NEBRASKA CRAFT BREWERY BOARD

#### Section

- 53-501. Nebraska Craft Brewery Board; created; members; qualifications; vacancy.
- 53-502. Nebraska Craft Brewery Board; meetings; members; terms; expenses; removal; procedure.
- 53-503. Nebraska Craft Brewery Board; powers and duties.
- 53-504. Nebraska Beer Industry Promotional Fund; created; use; investment; holder of craft brewery license; annual fee; use.
- 53-505. Nebraska Craft Brewery Board; annual report; contents; fee.

**53-501 Nebraska Craft Brewery Board; created; members; qualifications; vacancy.**

(1) The Nebraska Craft Brewery Board is created. All board members shall be (a) citizens of Nebraska, (b) at least twenty-one years of age, and (c) either

engaged in or previously engaged in the manufacture or the wholesale or retail sale of beer in this state or engaged or previously engaged in the production in this state of agricultural products that are utilized in the brewing process. The board shall consist of seven members to be appointed by the Governor on a nonpartisan basis. At least two board members shall be selected by the Governor from a list of no fewer than ten candidates submitted by the Nebraska Craft Brewers Guild or its successor organization. In addition, at least two board members shall be selected by the Governor from a list of no fewer than ten candidates submitted by the Associated Beverage Distributors of Nebraska or its successor organization. The Director of Agriculture or his or her designee and the executive director of the Nebraska Tourism Commission or his or her designee shall be nonvoting, ex officio members of the board.

(2) Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy pursuant to the qualifications set forth in subsection (1) of this section.

**Source:** Laws 2016, LB1105, § 1.  
Effective date April 19, 2016.

**53-502 Nebraska Craft Brewery Board; meetings; members; terms; expenses; removal; procedure.**

(1) Within thirty days after the appointment of the initial members of the Nebraska Craft Brewery Board, such board shall conduct its first regular meeting. During that meeting, the board members shall elect from among themselves, by majority vote, a chairperson, vice-chairperson, secretary, and treasurer, all to serve for terms of one year from the date of election. Subsequent board meetings shall take place at least once every six months and at such times as called by the chairperson or by any three board members.

(2) Each member shall serve for a term of three years and may be reappointed.

(3) All voting members of the board shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of official responsibilities as members of such board pursuant to sections 81-1174 to 81-1177.

(4) A member may be removed by the Governor for cause. The member shall first be given a written copy of the charges against him or her and also an opportunity to be heard publicly. If a member moves out of Nebraska, that shall be deemed sufficient cause for removal from office.

**Source:** Laws 2016, LB1105, § 2.  
Effective date April 19, 2016.

**53-503 Nebraska Craft Brewery Board; powers and duties.**

The Nebraska Craft Brewery Board has the following powers and duties:

(1) Establish a public forum to provide any manufacturer of beer or producer of agricultural products used in the brewing process the opportunity, at least once annually, to discuss with the board its policies and procedures;

(2) Keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to make these records available for examination upon request by members of the public;

(3) Authorize and approve the expenditure of funds collected pursuant to section 53-504;

(4) Serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the beer industry; and

(5) Adopt and promulgate rules and regulations to carry out sections 53-501 to 53-505.

**Source:** Laws 2016, LB1105, § 3.

Effective date April 19, 2016.

**53-504 Nebraska Beer Industry Promotional Fund; created; use; investment; holder of craft brewery license; annual fee; use.**

(1) The Nebraska Beer Industry Promotional Fund is created. The fund shall consist of money credited pursuant to this section, fees received from shipping licenses issued to beer manufacturers pursuant to subsection (2) of section 53-123.15, gifts, grants, bequests, and any money appropriated by the Legislature. For administrative purposes, the fund shall be located in the Department of Agriculture.

(2) Beginning July 1, 2016, in addition to the annual license fee imposed by section 53-124.01, each holder of a craft brewery license shall pay an annual fee in the amount of two hundred fifty dollars to the Nebraska Liquor Control Commission or shall opt out of paying the additional fee on forms provided by the commission. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Nebraska Beer Industry Promotional Fund.

(3) The Department of Agriculture, at the direction of and in cooperation with the Nebraska Craft Brewery Board, shall use the Nebraska Beer Industry Promotional Fund to develop and maintain programs for the research and advancement of the beer brewing process, the marketing and promotion of the beer industry in Nebraska, and the marketing and promotion of agricultural products and their byproducts grown and produced in Nebraska for use in the beer industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the field of beer brewing and business development, as deemed necessary by the board, and programs to carry out the purposes of this subsection. None of the money credited to the Nebraska Beer Industry Promotional Fund may be used for lobbying purposes.

(4) Money in the Nebraska Beer Industry Promotional Fund not expended during any fiscal year may be reappropriated for the ensuing biennium. 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 2016, LB1105, § 4.

Effective date April 19, 2016.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**53-505 Nebraska Craft Brewery Board; annual report; contents; fee.**

(1) The Nebraska Craft Brewery Board shall publish an annual report on or before January 1 of each year which shall set forth in detail the following:

(a) The name and address of each board member and a copy of all rules and regulations adopted and promulgated by the board; and

(b) A detailed explanation of all programs for which the board approved funding during the most recently completed fiscal year pursuant to section 53-504.

(2) Each annual report shall be presented electronically to the Nebraska Liquor Control Commission within thirty days after its publication and made available also to any person who requests a copy. Except for the annual copy required by this section to be provided to the commission, the board may charge a nominal fee to cover the costs of printing and postage for making available copies of its annual reports.

**Source:** Laws 2016, LB1105, § 5.  
Effective date April 19, 2016.



## LIVESTOCK

# CHAPTER 54 LIVESTOCK

### Article.

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## ARTICLE 1

### LIVESTOCK BRAND ACT

#### Section

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## Section

- 54-1,129. Livestock auction market or packing plant; brand inspection; election to provide.
- 54-1,130. Livestock auction market or packing plant; election; how made.
- 54-1,131. Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.

**54-170 Act, how cited.**

Sections 54-170 to 54-1,131 shall be known and may be cited as the Livestock Brand Act.

**Source:** Laws 1999, LB 778, § 1; Laws 2000, LB 213, § 3; Laws 2013, LB435, § 1; Laws 2014, LB768, § 1; Laws 2014, LB884, § 1.

**54-171 Definitions; where found.**

For purposes of the Livestock Brand Act, the definitions found in sections 54-172 to 54-190 shall be used.

**Source:** Laws 1999, LB 778, § 2; Laws 2013, LB435, § 2; Laws 2014, LB768, § 2.

**54-172 Bill of sale, defined.**

Bill of sale means a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the purchaser's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgments. For any conveyance or transfer of title to cattle subject to assessment imposed pursuant to the federal Beef Promotion and Research Order, 7 C.F.R. part 1260, for which the purchaser is the collecting person pursuant to 7 C.F.R. 1260.311 for purposes of collecting and remitting such assessment, the bill of sale shall include a notation of the amount the purchaser collected from the seller or deducted from the sale proceeds for the assessment. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the purchaser.

**Source:** Laws 1999, LB 778, § 3; Laws 2014, LB768, § 3.

**54-175.01 Brand inspection service area, defined.**

Brand inspection service area means all Nebraska counties and areas of Nebraska counties contiguous with the brand inspection area designated by section 54-1,109.

**Source:** Laws 2014, LB768, § 4.

**54-186.01 Out-of-state brand permit, defined.**

Out-of-state brand permit means an authorization for a one-time use of a brand registered with a state other than Nebraska to brand cattle imminently being exported out of Nebraska.

**Source:** Laws 2013, LB435, § 3.

**54-1,108 Brand inspections; when; fees; 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 one dollar and ten 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 or brand inspection service 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. Brand inspections requested by either a purchaser or seller of cattle located within the brand inspection service area shall be provided upon the same terms and charges as brand inspections performed within the brand inspection area. If stray 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.

(c) Fees for inspections performed outside of the brand inspection area that are not provided for in subdivision (a) of this subsection shall be the inspection fee established in such subdivision plus a fee to cover the actual expense of performing the inspection, including mileage at the rate established by the Department of Administrative Services and an hourly rate, not to exceed thirty dollars per hour, for the travel and inspection time incurred by the brand committee to perform such inspection. The brand committee shall charge and collect the actual expense fee. Such fee shall apply to inspections performed outside the brand inspection area as part of an investigation into known or alleged violations of the Livestock Brand Act and shall be charged against the person committing the violation.

(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; Laws 2014, LB768, § 5; Laws 2015, LB85, § 1.

**54-1,110 Brand inspection area; brand inspection requirements.**

(1) Except as provided in subsections (2) and (3) of this section, no person shall move, in any manner, cattle from a point within the brand inspection area

to a point outside the brand inspection area unless such cattle first have a brand inspection by the Nebraska Brand Committee and a certificate of inspection is issued. A copy of such certificate shall accompany the cattle and shall be retained by all persons moving such cattle as a permanent record.

(2) Cattle in a registered feedlot registered under sections 54-1,120 to 54-1,122 or a registered dairy registered under sections 54-1,122.01 and 54-1,122.02 are not subject to the brand inspection of subsection (1) of this section. Possession by the shipper or trucker of a shipping certificate from the registered feedlot or registered dairy constitutes compliance if the cattle being shipped are as represented on such shipping certificate.

(3) If the line designating the brand inspection area divides a farm or ranch or lies between noncontiguous parcels of land which are owned or operated by the same cattle owner or owners, a permit may be issued, at the discretion of the Nebraska Brand Committee, to the owner or owners of cattle on such farm, ranch, or parcels of land to move the cattle in and out of the brand inspection area without inspection. If the line designating the brand inspection area lies between a farm or ranch and nearby veterinary medical facilities, a permit may be issued, at the discretion of the brand committee, to the owner or owners of cattle on such farm or ranch to move the cattle in and out of the brand inspection area without inspection to obtain care from the veterinary medical facilities. The brand committee shall issue initial permits only after receiving an application which includes an application fee established by the brand committee which shall not be more than fifteen dollars. The brand committee shall mail all current permitholders an annual renewal notice, for January 1 renewal, which requires a renewal fee established by the brand committee which shall not be more than fifteen dollars. If the permit conditions still exist, the cattle owner or owners may renew the permit.

(4) No person shall sell any cattle knowing that the cattle are to be moved, in any manner, in violation of this section. Proof of shipment or removal of the cattle from the brand inspection area by the purchaser or his or her agent is prima facie proof of knowledge that sale was had for removal from the brand inspection area.

(5) In cases of prosecution for violation of this section, venue may be established in the county of origin or any other county through which the cattle may pass in leaving the brand inspection area.

**Source:** Laws 1999, LB 778, § 41; Laws 2000, LB 213, § 6; Laws 2002, LB 589, § 8; Laws 2014, LB768, § 6.

**54-1,111 Brand inspection area; sale or trade of cattle; requirements.**

(1) Except as provided in subsection (2) of this section, no person shall sell or trade any cattle located within the brand inspection area, nor shall any person buy or purchase any such cattle unless the cattle have been inspected for brands and ownership and a certificate of inspection or brand clearance has been issued by the Nebraska Brand Committee. Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the brand committee. Any time a brand inspection is required by law, a brand investigator or brand inspector may transfer evidence of ownership of such cattle from a seller to a purchaser by issuing a certificate of inspection.

(2) A brand inspection is not required:

(a) For cattle of a registered feedlot registered under sections 54-1,120 to 54-1,122 shipped for direct slaughter or sale on any terminal market;

(b) For cattle of a registered dairy registered under sections 54-1,122.01 and 54-1,122.02 shipped for direct slaughter or sale on any terminal market;

(c) For cattle that are transferred to a family corporation when all the shares of capital stock of the corporation are owned by the husband, wife, children, or grandchildren of the transferor and there is no consideration for the transfer other than the issuance of stock of the corporation to such family members;

(d) When the change of ownership of cattle is a change in form only and the surviving interests are in the exact proportion as the original interests of ownership. When there is a change of ownership described in subdivision (2)(c) or (d) of this section, an affidavit, on a form prescribed by the Nebraska Brand Committee, signed by the transferor and stating the nature of the transfer and the number of cattle involved and the brands presently on the cattle, shall be filed with the brand committee;

(e) For cattle sold or purchased for educational or exhibition purposes or other recognized youth activities if a properly executed bill of sale is exchanged and presented upon demand. Educational or exhibition purpose means cattle sold or purchased for the purpose of being fed, bred, managed, or tended in a program designed to demonstrate or instruct in the use of various feed rations, the selection of individuals of certain physical conformation or breeds, the measurement and recording of rate of gain in weight or fat content of meat or milk produced, or the preparation of cattle for the purpose of exhibition or for judging as to quality and conformation;

(f) For calves under the age of thirty days sold or purchased at private treaty if a bill of sale is exchanged and presented upon demand; and

(g) For purebred cattle raised by the seller and individually registered with an organized breed association if a properly executed bill of sale is exchanged and presented upon demand.

**Source:** Laws 1999, LB 778, § 42; Laws 2000, LB 213, § 7; Laws 2014, LB768, § 7.

**54-1,120 Registered feedlot; application; requirements; fees; inspections; records.**

(1) Any person who operates a cattle feeding operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered feedlot. The application form shall be prescribed by the brand committee and shall be made available by the director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

(a) The operator's feedlot must be permanently fenced; and

(b) The operator must commonly practice feeding cattle to finish for slaughter.

If the application is satisfactory, and upon payment of an initial registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The initial fee for a registered feedlot shall be an amount for a registered feedlot having one thousand head or less capacity and an equal amount for each additional one thousand head capacity, or part thereof, of such registered feedlot. For each subsequent year, the renewal fee for a registered feedlot shall be an amount for the first one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot and an equal amount for each additional one thousand head or portion thereof of average annual inventory of cattle on feed of the registered feedlot. The brand committee shall set the fee per one thousand head capacity or average annual inventory so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered feedlots to assure that brand laws are complied with, that registered feedlot shipping certificates are available, and that proper records are maintained. Violation of sections 54-1,120 to 54-1,122 subjects the operator to revocation or suspension of the feedlot registration issued. Sections 54-1,120 to 54-1,122 shall not be construed as prohibiting the operation of nonregistered feedlots.

(3) Registered feedlots are subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her feedlot. Cattle having originated from such registered feedlots may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered feedlot operator.

(4) The operator of a registered feedlot shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of the registered feedlots and the records of cattle on feed in such feedlots.

(5) The brand committee may rescind the registration of any registered feedlot operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered feedlots.

**Source:** Laws 1999, LB 778, § 51; Laws 2014, LB768, § 8.

#### **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.

**54-1,122.01 Registered dairy; application; requirements; fees; inspections; records.**

(1) Any person who operates a dairy operation located within the brand inspection area may make application to the Nebraska Brand Committee for registration as a registered dairy. The application form shall be prescribed by the brand committee and shall be made available by the director of the brand committee for this purpose upon written request. If the applicant is an individual, the application shall include the applicant's social security number. After the brand committee has received a properly completed application, an agent of the brand committee shall within thirty days make an investigation to determine if the following requirements are satisfied:

(a) The operator's dairy must be permanently fenced; and

(b) The operator must identify each animal individually as directed by the Nebraska Brand Committee.

If the application is satisfactory, and upon payment of a registration fee by the applicant, the brand committee shall issue a registration number and registration certificate valid for one year unless rescinded for cause. If the registration is rescinded for cause, any registration fee shall be forfeited by the applicant. The initial fee for a registered dairy shall be an amount for a registered dairy having one thousand head or less capacity and an equal amount for each additional one thousand head capacity, or part thereof, of such registered dairy. For each subsequent year, the renewal fee for a registered dairy shall be an amount for the first one thousand head or portion thereof of average annual inventory of dairy cattle of the registered dairy and an equal

amount for each additional one thousand head or portion thereof of average annual inventory of dairy cattle of the registered dairy. The brand committee shall set the fee per one thousand head capacity or average annual inventory so as to correspond with the inspection fee provided under section 54-1,108. The registration fee shall be paid on an annual basis.

(2) The brand committee may adopt and promulgate rules and regulations for the operation of registered dairies to assure that brand laws are complied with, that registered dairy shipping certificates are available, and that proper records are maintained. This section shall not be construed as prohibiting the operation of nonregistered dairies.

(3) A registered dairy is subject to inspection at any reasonable time at the discretion of the brand committee and its authorized agents, and the operator shall show cattle purchase records or certificates of inspection to cover all cattle in his or her dairy. Cattle having originated from any such registered dairy may from time to time, at the discretion of the committee, be subject to a spot-check inspection and audit at the destination to enable the brand committee to assure satisfactory compliance with the brand laws by the registered dairy operator.

(4) The operator of a registered dairy shall keep cattle inventory records. A form for such purpose shall be prescribed by the brand committee. The brand committee and its employees may from time to time make spot checks and audits of registered dairies and the records of cattle in such registered dairies.

(5) The brand committee may rescind or suspend the registration of any registered dairy operator who fails to cooperate or violates the laws or rules and regulations of the brand committee covering registered dairies.

**Source:** Laws 2000, LB 213, § 1; Laws 2014, LB768, § 9.

#### **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.

**54-1,128 Brand with brand recorded or registered in another state; application for out-of-state brand permit; contents; fee.**

(1) An owner may brand cattle with a brand recorded or registered in another state when:

(a) Cattle are purchased at a livestock auction market licensed under the Livestock Auction Market Act or congregated at another location approved by the Nebraska Brand Committee;

(b) The cattle will be imminently exported from Nebraska;

(c) The cattle are branded at the livestock auction market or other approved location; and

(d) An out-of-state brand permit has been obtained prior to branding the cattle.

(2) An application for an out-of-state brand permit shall be made to a brand inspector and shall include a description of the brand, a written application, and a fee not to exceed fifty dollars as determined by the Nebraska Brand Committee. A brand inspector shall evaluate and may approve an out-of-state brand permit within a reasonable period of time.

(3) Cattle branded under an out-of-state brand permit shall remain subject to all other brand inspection requirements under the Livestock Brand Act.

**Source:** Laws 2013, LB435, § 4.

**Cross References**

Livestock Auction Market Act, see section 54-1156.

**54-1,129 Livestock auction market or packing plant; brand inspection; election to provide.**

The owner or operator of any livestock auction market, as defined in section 54-1158, or packing plant located in any county outside the brand inspection area may voluntarily elect to provide brand inspection for all cattle brought to such livestock auction market or packing plant from within the brand inspection area upon compliance with sections 54-1,129 to 54-1,131.

**Source:** Laws 1963, c. 319, § 28, p. 972; Laws 1987, LB 450, § 9; Laws 1999, LB 778, § 76; R.S.1943, (2010), § 54-1183; Laws 2014, LB884, § 2.

**54-1,130 Livestock auction market or packing plant; election; how made.**

The election provided for by section 54-1,129 shall be made by (1) filing with the Secretary of State, in form to be prescribed by the secretary, a written notice of such election and agreement to be bound by section 54-1,131 and (2)

posting conspicuously on the premises a notice of the fact that brand inspection is provided at such livestock auction market or packing plant.

**Source:** Laws 1963, c. 319, § 29, p. 973; Laws 1987, LB 450, § 10; R.S.1943, (2010), § 54-1184; Laws 2014, LB884, § 3.

**54-1,131 Livestock auction market or packing plant; brand inspection; how conducted; fees; guarantee.**

Inspection provided for in sections 54-1,129 to 54-1,131 shall be conducted in the manner established by the Livestock Brand Act. The owner or operator making such election may be required to guarantee to the Nebraska Brand Committee that inspection fees derived from such livestock auction market or packing plant will be sufficient, in each twelve-month period, to pay the per diem and mileage of the inspectors required and that he or she will reimburse the committee for any deficit incurred in any such twelve-month period. Such guarantee shall be secured by a corporate surety bond, to be approved by the Secretary of State, in a penal sum to be established by the Nebraska Brand Committee.

**Source:** Laws 1963, c. 319, § 30, p. 973; Laws 1987, LB 450, § 11; Laws 1999, LB 778, § 77; Laws 2000, LB 213, § 11; R.S.1943, (2010), § 54-1185; Laws 2014, LB884, § 4.

## ARTICLE 2

### LIENS

Section

- 54-201. Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.  
 54-208. Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.  
 54-209. Lien satisfied; financing statement; termination.

**54-201 Agister's lien; domestic and foreign; perfection; financing statement; filing; enforcement; fee.**

(1) When any person, firm, corporation, partnership, or limited liability company not provided for in subsection (2) of this section procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care, as long as the holders of any prior liens shall have agreed in writing to the contract for the feed and care of the livestock involved. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number

or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(2) When any person, firm, corporation, partnership, or limited liability company whose residence or principal place of business is located outside the State of Nebraska procures, contracts with, or hires any other person, firm, corporation, partnership, or limited liability company within the State of Nebraska to feed and take care of any kind of livestock, the person, firm, corporation, partnership, or limited liability company so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care furnished for the contract price agreed upon or, in case no price has been agreed upon, for the reasonable value of such feed and care. A lien created under this subsection shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. A lien created under this subsection shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall be filed prior to removal of such livestock from the premises of the person, firm, corporation, partnership, or limited liability company entitled to a lien and shall contain or have attached thereto (a) the name and address and the social security number or federal tax identification number of the person, firm, corporation, partnership, or limited liability company claiming the lien, (b) the name and address and the social security number or federal tax identification number, if known, of the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished, (c) a description of the livestock fed and furnished care, and (d) the amount justly due for the feeding and care. The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, corporation, partnership, or limited liability company for whom the feeding and care were furnished. The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

(3) Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.

**Source:** Terr. Laws 1867, § 1, p. 12; Laws 1889, c. 31, § 1, p. 378; R.S.1913, § 89; C.S.1922, § 97; C.S.1929, § 54-201; Laws 1935, c. 118, § 1, p. 433; C.S.Supp.,1941, § 54-201; R.S.1943, § 54-201; Laws 1982, LB 962, § 2; Laws 1984, LB 808, § 7; Laws 1988, LB 943, § 18; Laws 1993, LB 121, § 335; Laws 1998, LB 1321, § 96; Laws 1999, LB 550, § 36; Laws 2001, LB 54, § 25; Laws 2014, LB750, § 16.

**54-208 Lien for feed, feed ingredients, and related costs; perfection; financing statement; filing; enforcement; fee.**

When any person, firm, partnership, limited liability company, or corporation contracts or agrees with another person, firm, partnership, limited liability company, or corporation to deliver any feed or feed ingredients for any kind of livestock, the person, firm, partnership, limited liability company, or corporation so contracted or agreed with shall have a lien upon such livestock for the feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients for the agreed-upon contract price or, in case no price has been agreed upon, for the reasonable value of such feed or feed ingredients and related delivery costs, which shall be a first, paramount, and prior lien if the holders of any prior liens have agreed in writing to the contract for the feed or feed ingredients and related delivery costs. The lien may only be enforced against the person, firm, partnership, limited liability company, or corporation who has contracted or agreed for such feed or feed ingredients and related costs incurred in the delivery of such feed or feed ingredients.

A lien created under this section shall be perfected as provided in article 9, Uniform Commercial Code. Any financing statement filed to perfect such lien shall contain or have attached thereto:

(1) The name and address and the social security number or federal tax identification number of the person, firm, partnership, limited liability company, or corporation claiming the lien;

(2) The name and address and the social security number or federal tax identification number, if known, of the person, firm, partnership, limited liability company, or corporation for whom such feed or feed ingredients were delivered;

(3) The amount due for such feed or feed ingredients and related delivery costs covered by the lien;

(4) The place where such livestock are located;

(5) A reasonable description of such livestock including the number and type of such livestock; and

(6) The last date on which such feed or feed ingredients were delivered.

The failure to include the social security number or federal tax identification number shall not render any filing unperfected. At the time the lien is filed, the lienholder shall send a copy to the person, firm, partnership, limited liability company, or corporation for whom the feed or feed ingredients were delivered.

Such lien shall attach and have priority as of the date of the filing if filed in the manner provided in this section. Such lien shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code.

The fee for filing, amending, or releasing such lien shall be the same as set forth in section 9-525, Uniform Commercial Code.

Effective January 1, 2015, this section applies to a lien created under this section regardless of when the lien was created.



Nothing in this section shall be construed to amend or repeal section 54-201 relating to agisters' liens.

**Source:** Laws 1984, LB 1064, § 1; Laws 1988, LB 943, § 19; Laws 1993, LB 121, § 336; Laws 1998, LB 1321, § 97; Laws 1999, LB 550, § 37; Laws 2001, LB 54, § 26; Laws 2014, LB750, § 17.

**54-209 Lien satisfied; financing statement; termination.**

When a lien created under section 54-201 or 54-208 is satisfied, any financing statement filed to perfect that lien shall be terminated in the manner and form provided in article 9, Uniform Commercial Code.

**Source:** Laws 1985, LB 606, § 16; Laws 1988, LB 943, § 20; Laws 1999, LB 550, § 38; Laws 2001, LB 54, § 27; Laws 2014, LB750, § 18.

**ARTICLE 4**

**ESTRAYS AND TRESPASSING ANIMALS**

Section

54-415. Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.

**54-415 Estrays; report; sale; procedure; disposition of proceeds; violations; penalty.**

Any person taking up an estray within the brand inspection area or brand inspection service area shall report the same within seven days thereafter to the Nebraska Brand Committee. Any person taking up an estray in any other area of the state shall report the same to the county sheriff of the county where the estray was taken. If the animal is determined to be an estray by a representative of the Nebraska Brand Committee or the county sheriff, as the case may be, such animal shall, as promptly as may be practicable, be sold through the most convenient livestock auction market. The proceeds of such sale, after deducting the selling expenses, shall be paid over to the Nebraska Brand Committee to be placed in the estray fund identified in section 54-1,118, if such estray was taken up within the brand inspection area or brand inspection service area, and otherwise to the treasurer of the county in which such estray was taken up. During the time such proceeds are impounded, any person taking up such estray may file claim with the Nebraska Brand Committee or the county treasurer, as the case may be, for the expense of feeding and keeping such estray while in his or her possession. When such claim is filed it shall be the duty of the Nebraska Brand Committee or the county board, as the case may be, to decide on the validity of the claim so filed and allow the claim for such amount as may be deemed equitable. When the estray is taken up within the brand inspection area or brand inspection service area, such proceeds shall be impounded for one year, unless ownership is determined sooner by the Nebraska Brand Committee, and if ownership is not determined within such one-year period, the proceeds shall be paid into the permanent school fund, less the actual expenses incurred in the investigation and processing of the estray fund. Any amount deducted as actual expenses incurred shall be deposited in the Nebraska Brand Inspection and Theft Prevention Fund. When the estray is taken up outside the brand inspection area or brand inspection service area and ownership cannot be determined by the county board, the county board shall then order payment of the balance of the sale proceeds less expenses, to the permanent school fund. If the brand committee or the county board determines

ownership of an estray sold in accordance with this section by means of evidence of ownership other than the owner's recorded Nebraska brand, an amount not to exceed the actual investigative costs or expenses may be deducted from the proceeds of the sale. Any person who violates this section is guilty of a Class II misdemeanor. The definitions found in sections 54-172 to 54-190 apply to this section.

**Source:** R.S.1866, p. 154; R.S.1913, § 123; C.S.1922, § 131; C.S.1929, § 54-415; R.S.1943, § 54-415; Laws 1965, c. 333, § 1, p. 953; Laws 1967, c. 344, § 1, p. 920; Laws 1977, LB 39, § 19; Laws 1979, LB 564, § 19; Laws 1980, LB 797, § 23; Laws 1983, LB 536, § 5; Laws 1999, LB 778, § 61; Laws 2014, LB768, § 10.

## ARTICLE 6 DOGS AND CATS

### (a) DOGS

Section

54-603. Dogs; license tax; amount; service animal; license; county, city, or village; collect fee; disposition.

### (c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625. Act, how cited.

54-626. Terms, defined.

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

54-628. Inspection program; department; powers; reinspection fee; prohibited acts; penalty.

54-628.01. Director; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.

54-628.02. Violation of act, rule or regulation, or order of director; proceedings authorized.

54-630. Application; denial; grounds; appeal.

54-632. Notice or order; service requirements; hearing; appeal.

54-633. Enforcement powers; administrative fine.

54-633.01. Special investigator; powers; referral to another law enforcement officer.

54-635. Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.

54-637. Information on spaying and neutering; requirements.

54-640. Commercial dog or cat breeder; duties.

54-641. Licensees; primary enclosures; requirements.

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

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

54-641.03. Breeding dog; microchip; identification.

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

### (d) DOG AND CAT PURCHASE PROTECTION ACT

54-645. Terms, defined.

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

### (a) DOGS

**54-603 Dogs; license tax; amount; service animal; license; county, city, or village; collect fee; disposition.**

(1) Any county, city, or village shall have authority by ordinance or resolution to impose a license tax, in an amount which shall be determined by the appropriate governing body, on the owner or harbinger of any dog or dogs, to be

paid under such regulations as shall be provided by such ordinance or resolutions.

(2) Every service animal shall be licensed as required by local ordinances or resolutions, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

(3) Any county, city, or village that imposes a license tax on the owner or harbinger of any cat or cats or any dog or dogs under this section shall, in addition to the license tax imposed by the licensing jurisdiction, collect from the licensee a fee of one dollar and twenty-five cents. The person designated by the licensing jurisdiction to collect and administer the license tax shall act as agent for the State of Nebraska in the collection of the fee. From each fee of one dollar and twenty-five cents collected, such person shall retain three cents and remit the balance to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction's general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to an account of the private contractor. The remittance to the State Treasurer shall be made at least annually at the conclusion of the licensing jurisdiction's fiscal year, except that any licensing jurisdiction or private contractor that collects fifty dollars or less of such fees during the fiscal year may remit the fees when the cumulative amount of fees collected reaches fifty dollars.

**Source:** Laws 1877, § 3, p. 156; R.S.1913, § 174; C.S.1922, § 171; C.S. 1929, § 54-603; R.S.1943, § 54-603; Laws 1976, LB 515, § 2; Laws 1997, LB 814, § 7; Laws 2008, LB806, § 13; Laws 2010, LB910, § 3; Laws 2015, LB360, § 12.

#### Cross References

For other provisions authorizing municipalities to impose license tax on dogs, see sections 14-102, 15-220, 16-206, and 17-526.

### (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; Laws 2015, LB360, § 13.

#### **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) Harbor means:

(a) Providing shelter or housing for a dog or cat regulated under the act; or

(b) Maintaining the care, supervision, or control of a dog or cat regulated under the act;

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

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

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

(18) Normal business hours means daily between 7 a.m. and 7 p.m. unless an applicant, a licensee, or any other person the department has reasonable cause to believe is required by the act to be licensed provides in writing to the department a description of his or her own normal business hours which reasonably allows the department to make inspections;

(19) Operator means a person performing the activities of an animal control facility, an animal rescue, an animal shelter, a boarding kennel, a commercial cat breeder, a commercial dog breeder, a dealer, or a pet shop;

(20) 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;

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

(22) Premises means all public or private buildings, vehicles, equipment, containers, kennels, pens, and cages used by an operator and the public or private ground upon which an operator's facility is located if such buildings, vehicles, equipment, containers, kennels, pens, cages, or ground are used by the owner or operator in the usual course of business;

(23) 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;

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

(25) Significant threat to the health or safety of dogs or cats means:

(a) Not providing shelter or protection from extreme weather resulting in life-threatening conditions predisposing to hyperthermia or hypothermia in dogs or cats that are not acclimated to the temperature;

(b) Acute injuries involving potentially life-threatening medical emergencies in which the owner refuses to seek immediate veterinary care;

(c) Not providing food or water resulting in conditions of potential starvation or severe dehydration;

(d) Egregious human abuse such as trauma from beating, torturing, mutilating, burning, or scalding; or

(e) Failing to maintain sanitation resulting in egregious situations where a dog or cat cannot avoid walking, lying, or standing in feces;

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

(27) 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; Laws 2015, LB360, § 14.

**54-627 License requirements; fees; 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 a one-time license fee of one hundred twenty-five dollars. Such fee is nonreturnable. Any license issued on or before November 30, 2015, shall remain valid after expiration unless it lapses pursuant to this section, is revoked pursuant to section 54-631, or is voluntarily surrendered. Upon receipt of an application and the license fee and upon completion of a qualifying inspection, the appropriate license may be issued by the department. The department may enter the premises of any applicant for a license to determine if the applicant meets the requirements for licensure under the act. If an applicant does not at the time of inspection harbor any dogs or cats, the inspection shall be of the applicant's records and the planned housing facilities. Such license shall not be transferable to another person or location and shall lapse automatically upon a change of ownership or location.

(3)(a) In addition to the license fee required in subsection (2) of this section, an annual fee shall also be charged. Except as otherwise provided in this



subsection, the annual fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats harbored by the licensee over the previous twelve-month period:

- (i) Ten or fewer dogs or cats, one hundred seventy-five dollars;
  - (ii) Eleven to fifty dogs or cats, two hundred twenty-five dollars;
  - (iii) Fifty-one to one hundred dogs or cats, two hundred seventy-five dollars;
  - (iv) One hundred one to one hundred fifty dogs or cats, three hundred twenty-five dollars;
  - (v) One hundred fifty-one to two hundred dogs or cats, three hundred seventy-five dollars;
  - (vi) Two hundred one to two hundred fifty dogs or cats, four hundred twenty-five dollars;
  - (vii) Two hundred fifty-one to three hundred dogs or cats, four hundred seventy-five dollars;
  - (viii) Three hundred one to three hundred fifty dogs or cats, five hundred twenty-five dollars;
  - (ix) Three hundred fifty-one to four hundred dogs or cats, five hundred seventy-five dollars;
  - (x) Four hundred one to four hundred fifty dogs or cats, six hundred twenty-five dollars;
  - (xi) Four hundred fifty-one to five hundred dogs or cats, six hundred seventy-five dollars; and
  - (xii) More than five hundred dogs or cats, two thousand one hundred dollars.
- (b) If a person operates with more than one type of license at the same location, the person shall pay only one annual fee based on the primary licensed activity occurring at that location as determined by the number of dogs or cats affected by the licensed activity.
- (c) The annual fee for a licensee that does not own or harbor dogs or cats shall be one hundred fifty dollars.
- (d) The annual fee for an animal rescue shall be one hundred fifty dollars.
- (e) The annual 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 total number of breeding dogs or cats owned or harbored by the commercial breeder over the previous twelve-month period.
- (f) In addition to the fee as prescribed in the fee schedule set forth in subdivision (a) of this subsection, the annual fee for a commercial dog or cat breeder, pet shop, dealer, or boarding kennel shall include a fee of two dollars times the daily average number of dogs or cats owned or harbored by the licensee over the previous twelve-month period numbering more than ten dogs or cats subject to subdivision (g) of this subsection.
- (g) The fees charged under subdivision (a) of this subsection may be increased or decreased by rule and regulation as adopted and promulgated by the department, but the maximum fee that may be charged shall not result in a fee for any license category that exceeds the annual fee set forth in subdivision (a) of this subsection by more than one hundred dollars. The fee charged under subdivision (f) of this subsection may be increased or decreased by rule and regulation as adopted and promulgated by the department, but such fee shall

not exceed three dollars times the number of dogs or cats harbored by the licensee over the previous twelve-month period numbering more than ten dogs or cats.

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

(5) An applicant, a licensee, or a person the department has reason to believe is an operator and required to obtain a license under this section shall make any applicable 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; Laws 2015, LB360, § 15.

**54-628 Inspection program; department; powers; reinspection fee; prohibited acts; penalty.**

(1) The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act.

(2) Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the department shall be available for temporary reassignment as needed to other activities and functions of the department in the event of a livestock disease emergency or any other threat to livestock or public health.

(3) When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant, licensee, or person the department has reason to believe is an operator, together with written notice to comply within the time limit established by the department and set out in such notice. If the department performs a reinspection for the purpose of determining if an operator has

complied within the time limit for compliance established pursuant to this subsection or has complied with section 54-628.01 or if the inspector must return to the operator's location because the operator was not available within a reasonable time as required by subsection (4) of this section, the applicant, licensee, or person the department has reason to believe is an operator shall pay a reinspection fee of one hundred fifty dollars together with the mileage of the inspector at the rate provided in section 81-1176. The purpose of the reinspection fee is to pay for the administrative costs associated with the additional inspection. 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. The assessment of the reinspection fee shall not prohibit the director from taking any other action as provided in the act.

(4) The department, at its discretion, may make unannounced inspections of any applicant, licensee, or person the department has reason to believe is an operator during normal business hours. An applicant, a licensee, and any person the department has reason to believe is an operator shall provide the department, in writing, and keep updated if there is any change, a telephone number where the operator can be reached during normal business hours. The applicant, licensee, or person the department has reason to believe is an operator shall provide a person over the age of nineteen to be available at the operation for the purpose of allowing the department to perform an inspection.

(5) If deemed necessary under the act or any rule or regulation adopted and promulgated pursuant to the act, the department may, for purposes of inspection, enter, without being subject to any action for trespass or damages, the premises of any applicant, licensee, or person the department has reason to believe is an operator, during normal business hours and in a reasonable manner, including all premises in or upon which dogs or cats are housed, harbored, sold, exchanged, or leased or are suspected of being housed, harbored, sold, exchanged, or leased.

(6) Pursuant to an inspection under the act, the department may:

(a) Enter and have full access to all premises where dogs or cats regulated under the act are harbored or housed or are suspected of being harbored or housed;

(b) Access all records pertaining to dogs or cats regulated under the act or suspected of pertaining to such dogs or cats and examine and copy all records pertaining to compliance with the act and the rules or regulations adopted and promulgated under the act. The department shall have authority to gather evidence, including, but not limited to, photographs;

(c) Inspect or reinspect any vehicle or carrier transporting or holding dogs or cats that is in the state to determine compliance with the act or any rules or regulations adopted and promulgated under the act;

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department to conduct an inspection pursuant to the act; or

(e) Issue and enforce a written stop-movement order pursuant to section 54-628.01.

(7) For purposes of this section, the private residence of any applicant, licensee, or person the department has reason to believe is an operator shall be

available for purposes of inspection only if dogs or cats are housed in a primary enclosure within the residence, including a room in such residence, and only such portion of the residence that is used as a primary enclosure shall be open to an inspection pursuant to this section.

(8) An applicant, licensee, or person the department has reason to believe is an operator shall not seek to avoid inspection by hiding dogs or cats regulated under the act in a private residence, on someone else's property, or at any other location. An applicant, licensee, or person the department has reason to believe is an operator shall provide full and accurate information to the department regarding the location of all dogs or cats harbored by the operator.

(9) Any applicant, licensee, or person the department has reason to believe is an operator who intentionally refuses to answer the door, fails to be available as provided in subsection (4) of this section, fails to comply with subsection (8) of this section, or otherwise obstructs the department's attempt to perform an inspection shall be in violation of section 54-634 and subject to an administrative fine or other proceedings as provided in section 54-633 or 54-634.

**Source:** Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3; Laws 2009, LB241, § 5; Laws 2015, LB360, § 16.

**54-628.01 Director; stop-movement order; issuance; contents; hearing; department; powers; costs; reinspection; hearing.**

(1) The director may issue a stop-movement order if he or she has reasonable cause to believe that there exists (a) noncompliance with the Commercial Dog and Cat Operator Inspection Act or any rule or regulation adopted and promulgated pursuant to the act, including, but not limited to, unreasonable sanitation or housing conditions, failure to comply with standards for handling, care, treatment, or transportation for dogs or cats, operating without a license, or interfering with the department in the performance of its duties, or (b) any condition that, without medical attention, provision of shelter, facility maintenance or improvement, relocation of animals, or other management intervention, poses a significant threat to the health or safety of the dogs or cats owned or harbored by a violator.

(2) Such stop-movement order may require the violator to maintain the dogs or cats subject to the order at the existing location or other department-approved premises until such time as the director has issued a written release from the stop-movement order. The stop-movement order shall clearly advise the violator that he or she may request in writing a hearing before the director pursuant to section 54-632. The order issued pursuant to this section shall be final unless modified or rescinded by the director pursuant to section 54-632 at a hearing requested under this subsection.

(3) Pursuant to the stop-movement order, the department shall have the authority to enter the premises to inspect and determine if the dogs or cats subject to the order or the facilities used to house or transport such dogs or cats are kept and maintained in compliance with the requirements of the act and the rules and regulations adopted and promulgated pursuant to the act or if any management intervention imposed by the stop-movement order is being implemented to mitigate conditions posing a significant threat to the health or safety of dogs or cats harbored or owned by a violator. The department shall not be liable for any costs incurred by the violator or any personnel of the violator due to such departmental action or in enforcing the stop-movement order. The

department shall be reimbursed by the violator for the actual costs incurred by the department in issuing and enforcing any stop-movement order.

(4) A stop-movement order shall include:

(a) A description of the nature of the violations of the act or any rule or regulation adopted and promulgated pursuant to the act;

(b) If applicable, a description of conditions that pose a significant threat to the health or safety of the dogs or cats owned or harbored by the violator;

(c) The action necessary to bring the violator into compliance with the act and the rules and regulations adopted and promulgated pursuant to the act or, if applicable, to mitigate conditions posing a significant threat to the health and safety of the dogs or cats harbored or owned by the violator;

(d) Notice that if violations of the act or any rule or regulation or any conditions that pose a significant threat to the health or safety of the dogs or cats owned or harbored by the violator persist, the department may refer the matter to appropriate law enforcement for investigation and potential prosecution pursuant to Chapter 28, article 10; and

(e) The name, address, and telephone number of the violator who owns or harbors the dogs or cats subject to the order.

(5) Before receipt of a written release, the person to whom the stop-movement order was issued shall:

(a) Provide the department with an inventory of all dogs or cats on the premises at the time of the issuance of the order;

(b) Provide the department with the identification tag number, the tattoo number, the microchip number, or any other approved method of identification for each individual dog or cat;

(c) Notify the department within forty-eight hours of the death or euthanasia of any dog or cat subject to the order. Such notification shall include the dog's or cat's individual identification tag number, tattoo number, microchip number, or other approved identification;

(d) Notify the department within forty-eight hours of any dog or cat giving birth after the issuance of the order, including the size of the litter; and

(e) Maintain on the premises any dog or cat subject to the order, except that a dog or cat under one year of age under contract to an individual prior to the issuance of the order may be delivered to the individual pursuant to the contractual obligation. The violator shall provide to the department information identifying the dog or cat and the name, address, and telephone number of the individual purchasing the dog or cat. The department may contact the purchaser to ascertain the date of the purchase agreement to ensure that the dog or cat was sold prior to the stop-movement order and to determine that he or she did purchase such dog or cat. No additional dogs or cats shall be transferred onto the premises without written approval of the department.

(6) The department shall reinspect the premises to determine compliance within ten business days after the initial inspection that resulted in the stop-movement order. At the time of reinspection pursuant to this subsection, if conditions that pose a significant threat to the health or safety of the dogs or cats harbored or owned by the violator or noncompliant conditions continue to exist, further reinspections shall be at the discretion of the department. The

violator may request an immediate hearing with the director pursuant to any findings under this subsection.

**Source:** Laws 2009, LB241, § 6; Laws 2015, LB360, § 17.

**54-628.02 Violation of act, rule or regulation, or order of director; proceedings authorized.**

Whenever the director has reason to believe that any person has violated any provision of the Commercial Dog and Cat Operator Inspection Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director, the director may issue a notice of hearing as provided in section 54-632 requiring the person to appear before the director to (1) show cause why an order should not be entered requiring such person to cease and desist from the violation charged, (2) determine whether an administrative fine should be imposed or levied against the person pursuant to subsection (2) of section 54-633, or (3) determine whether the person fails to qualify for a license pursuant to section 54-630. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions according to law.

**Source:** Laws 2015, LB360, § 18.

**54-630 Application; denial; grounds; appeal.**

(1) Before the department approves an application for a 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 a license 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 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 a 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 pursuant to the



act and the rules and regulations adopted and promulgated by the department and should be issued a license. 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; Laws 2015, LB360, § 19.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-632 Notice or order; service requirements; hearing; appeal.**

(1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the applicant, licensee, or violator or on the person authorized by the applicant or licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the applicant, licensee, or violator or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the act or the rules and regulations adopted and promulgated pursuant to the act shall set forth the acts or omissions with which the applicant, licensee, or violator is charged.

(3) A notice of the right to a hearing shall set forth the time and place of the hearing except as otherwise provided in subsection (4) of this section and section 54-631. A notice of the right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) A request for a hearing under subsection (2) of section 54-628.01 shall request that the director set forth the time and place of the hearing. The director shall consider the interests of the violator in establishing the time and place of the hearing. Within three business days after receipt by the director of the hearing request, the director shall set forth the time and place of the hearing on the stop-movement order. A notice of the violator's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (6) of this section.

(5) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(6) An applicant, a licensee, or a violator waives the right to a hearing if such applicant, licensee, or violator does not attend the hearing at the time and place set forth in the notice described in subsection (3) or (4) of this section, without requesting that the director, at least two days before the designated time, change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the applicant, licensee, or violator shows the director that the

applicant, licensee, or violator had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the applicant, licensee, or violator waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing. If the department has issued a stop-movement order under section 54-628.01, the director may sustain, modify, or rescind the order after the hearing.

(7) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

**Source:** Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7; Laws 2009, LB241, § 8; Laws 2015, LB360, § 20.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**54-633 Enforcement powers; administrative fine.**

(1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

**Source:** Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8; Laws 2015, LB360, § 21.

**54-633.01 Special investigator; powers; referral to another law enforcement officer.**

If the director has reason to believe that any alleged violation of the Commercial Dog and Cat Operator Inspection Act, any alleged violation of the rules and regulations of the department, any alleged violation of an order of the director, or any other existing condition posing a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or a licensee constitutes cruel neglect, abandonment, or cruel mistreatment pursuant to

section 28-1009, the director may direct a special investigator employed by the department as authorized pursuant to section 81-201 to exercise the authorities of a law enforcement officer pursuant to sections 28-1011 and 28-1012 with respect to the dogs or cats or may request any other law enforcement officer as defined in section 28-1008 to inspect, care for, or impound the dogs or cats pursuant to sections 28-1011 and 28-1012. Any assignment of a special investigator by the director or referral to another law enforcement officer pursuant to this section shall be in cooperation and coordination with appropriate law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded pursuant to this section.

**Source:** Laws 2015, LB360, § 22.

**54-635 Commercial Dog and Cat Operator Inspection Program Cash Fund; created; use; investment.**

The Commercial Dog and Cat Operator Inspection Program Cash Fund is created and shall consist of money appropriated by the Legislature, gifts, grants, costs, fees, or charges from any source, including federal, state, public, and private sources. The money shall be used to carry out the Commercial Dog and Cat Operator Inspection 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 2000, LB 825, § 11; Laws 2016, LB909, § 3.  
Effective date July 21, 2016.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**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.

**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.

#### **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.

#### **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.

**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.

#### **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.

#### **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.

(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.

**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.

**ARTICLE 7**  
**PROTECTION OF HEALTH**

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

## Section

- 54-701.03. Terms, defined.  
 54-703. Prevention of diseases; enforcement; inspections; rules and regulations.  
 54-704. Prevention of diseases; federal agents; powers.  
 54-705. Prevention of diseases; orders of department; enforcement.

(c) SCABIES

- 54-724.01. Repealed. Laws 2015, LB 91, § 1.  
 54-724.02. Repealed. Laws 2015, LB 91, § 1.

(d) GENERAL PROVISIONS

- 54-726.04. Repealed. Laws 2015, LB 91, § 1.  
 54-742. Diseased animals; duty to report; livestock disease reporting system; animal infected with bovine trichomoniasis; report required; notice to adjacent landowner or land manager; form or affidavit submitted to department; department; duties; costs.  
 54-750. Diseased animals; harboring or sale prohibited; penalties.  
 54-751. Rules and regulations; violations; penalties.  
 54-752. Violations; penalties.  
 54-753. Prevention of disease; writ of injunction available.  
 54-753.06. Transferred to section 54-7,109.

(f) IMPORT CONTROL

- 54-784.01. Act, how cited.  
 54-789. Individual identification of cattle; Department of Agriculture; powers; State Veterinarian; powers.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

- 54-7,105. Act, how cited; purpose of sections.  
 54-7,105.01. Terms, defined.  
 54-7,106. Permit; notification requirements; application; denial; grounds; prohibited acts.  
 54-7,107. Records; contents; access by department.  
 54-7,108. Prohibited transfers; certificate of veterinary inspection; duties of exotic animal auction or exchange venue organizer; requirements for certain animals.  
 54-7,109. Compliance with game laws required.  
 54-7,110. Act; enforcement; rules and regulations; penalties.

(a) GENERAL POWERS AND DUTIES OF  
DEPARTMENT OF AGRICULTURE

**54-701.03 Terms, defined.**

For purposes of sections 54-701 to 54-753.05 and 54-797 to 54-7,103:

(1) Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, as such regulation existed on January 1, 2013;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) Bureau of Animal Industry means the Bureau of Animal Industry of the Department of Agriculture of the State of Nebraska and includes the State Veterinarian, deputy state veterinarian, veterinary field officers, livestock inspectors, investigators, and other employees of the bureau;

(4) Dangerous disease means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious threat to livestock health, and is of major importance in the trade of livestock and livestock products;

(5) Department means the Department of Agriculture of the State of Nebraska;

(6) Director means the Director of Agriculture of the State of Nebraska or his or her designee;

(7) Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;

(8) Exposed means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;

(9) Herd means any group of livestock maintained on common ground for any purpose or two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to health status;

(10) Livestock means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;

(11) Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese;

(12) Program disease means a livestock disease for which specific legislation exists for disease control or eradication;

(13) Quarantine means restriction of (a) movement imposed by the department on an animal, group of animals, or herd of animals because of infection with, or exposure to, a disease agent which affects livestock and (b) use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(14) Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary;

(15) Sale means a sale, lease, loan, trade, barter, or gift;

(16) Surveillance means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state and may include the observation or physical examination of an animal; and

(17) Veterinarian means an individual who is a graduate of an accredited college of veterinary medicine.

**Source:** Laws 1993, LB 267, § 2; Laws 1995, LB 718, § 6; Laws 1999, LB 404, § 25; Laws 1999, LB 870, § 2; Laws 2001, LB 438, § 3; Laws 2006, LB 856, § 17; Laws 2014, LB884, § 5.

**54-703 Prevention of diseases; enforcement; inspections; rules and regulations.**

(1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of the department shall enforce the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753.05 and 54-797 to 54-7,103 as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The Department of Agriculture may further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of sections 54-701 to 54-753.05 and 54-797 to 54-7,103.

**Source:** Laws 1927, c. 12, art. I, § 3, p. 81; C.S.1929, § 54-903; R.S.1943, § 54-703; Laws 1993, LB 267, § 4; Laws 2001, LB 438, § 4; Laws 2006, LB 856, § 18; Laws 2007, LB296, § 224; Laws 2014, LB884, § 6.

#### Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

### **54-704 Prevention of diseases; federal agents; powers.**

Any veterinary inspector or agent of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the United States Department of Agriculture for service in Nebraska may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department and when so authorized shall have and exercise all rights and powers vested by the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753.05 and 54-797 to 54-7,103 in agents and representatives in the regular employ of the department.

**Source:** Laws 1927, c. 12, art. I, § 4, p. 81; C.S.1929, § 54-904; R.S.1943, § 54-704; Laws 1993, LB 267, § 5; Laws 2001, LB 438, § 5; Laws 2006, LB 856, § 19; Laws 2014, LB884, § 7.

#### Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

### **54-705 Prevention of diseases; orders of department; enforcement.**

The Department of Agriculture or any officer, agent, employee, or appointee thereof may call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by

the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753.05, and such officer shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

**Source:** Laws 1927, c. 12, art. I, § 5, p. 82; C.S.1929, § 54-905; R.S.1943, § 54-705; Laws 1972, LB 1032, § 261; Laws 1988, LB 1030, § 45; Laws 1993, LB 267, § 6; Laws 2001, LB 438, § 6; Laws 2006, LB 856, § 20; Laws 2014, LB884, § 8.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

(c) SCABIES

**54-724.01 Repealed. Laws 2015, LB 91, § 1.**

**54-724.02 Repealed. Laws 2015, LB 91, § 1.**

(d) GENERAL PROVISIONS

**54-726.04 Repealed. Laws 2015, LB 91, § 1.**

**54-742 Diseased animals; duty to report; livestock disease reporting system; animal infected with bovine trichomoniasis; report required; notice to adjacent landowner or land manager; form or affidavit submitted to department; department; duties; costs.**

(1) It is the duty of any person who discovers, suspects, or has reason to believe that any animal belonging to him or her or which he or she has in his or her possession or custody or which, belonging to another, may come under his or her observation is affected with any dangerous, infectious, contagious, or otherwise transmissible disease which affects livestock to immediately report such fact, belief, or suspicion to the department or to any agent, employee, or appointee thereof.

(2) The department shall work together with livestock health committees, livestock groups, diagnostic laboratories, practicing veterinarians, producers, and others who may be affected, to adopt and promulgate rules and regulations to effectuate a workable livestock disease reporting system according to the provisions of this section. The rules and regulations shall establish who shall report diseases, what diseases shall be reported, how such diseases shall be reported, to whom diseases shall be reported, the method by which diseases shall be reported, and the frequency of reports required. For disease reporting purposes, the department shall categorize livestock diseases according to relative economic or health risk factors and may provide different reporting measures for the various categories.

(3) Any person who reasonably suspects that any beef or dairy breeding bull belonging to him or her or which he or she has in his or her possession or custody is infected with bovine trichomoniasis shall not sell or transport such animal, except for consignment directly to a federally recognized slaughter establishment, unless such person causes such animal to be tested for bovine trichomoniasis. Any person who owns or has possession or custody of a beef or dairy breeding bull, or who has a beef or dairy breeding bull belonging to



another under his or her observation, for which a laboratory confirmed diagnosis of bovine trichomoniasis has been made, shall report such diagnosis to the department within five business days after receipt of the laboratory confirmation. Any such breeding bull for which a laboratory confirmation of bovine trichomoniasis has been made shall not be sold or transported except for consignment directly to a federally recognized slaughter establishment.

(4)(a) An owner or manager of any beef or dairy breeding bull for which a laboratory confirmed diagnosis of bovine trichomoniasis has been made shall notify each adjacent landowner or land manager of the diagnosis if such land is capable of maintaining livestock susceptible to bovine trichomoniasis. Such notification shall be made to each landowner or land manager within fourteen days after the diagnosis even if cattle are not currently maintained on the owner's or manager's land.

(b) The owner or manager of the cattle shall submit to the department a form or affidavit attesting to the fact that the notification required under this subsection has occurred. The form or affidavit shall be submitted to the department within fourteen days after the diagnosis and shall include the names of adjacent landowners or land managers who were notified and their contact information.

(c) If an owner or manager does not, within such fourteen-day period, submit the form or affidavit indicating that adjacent landowners or land managers have been notified as required under this subsection, the department shall notify each adjacent landowner or land manager of the diagnosis. The department shall assess the administrative costs of the department to notify the adjacent landowners or land managers against the owner or manager that failed to comply with this subsection. The department shall determine the definition of adjacent based on the disease characteristics and modes of transmission. The department shall remit any administrative costs collected under this subsection to the State Treasurer for credit to the Nebraska Agricultural Products Marketing Cash Fund.

**Source:** Laws 1927, c. 12, art. VIII, § 1, p. 92; C.S.1929, § 54-938; R.S.1943, § 54-742; Laws 1993, LB 267, § 7; Laws 2001, LB 438, § 7; Laws 2013, LB423, § 4.

**Cross References**

Definitions for sections 54-742 to 54-753.05, see section 54-701.03.

**54-750 Diseased animals; harboring or sale prohibited; penalties.**

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal or any part thereof affected with an infectious, contagious, or otherwise transmissible disease except as provided by sections 54-701 to 54-753 and the rules and regulations prescribed by the Department of Agriculture thereunder. Any person so offending shall be deemed guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

**Source:** Laws 1927, c. 12, art. VIII, § 9, p. 94; C.S.1929, § 54-946; R.S.1943, § 54-750; Laws 1977, LB 39, § 23; Laws 1993, LB 267, § 13; Laws 2006, LB 856, § 21; Laws 2014, LB884, § 9.

**54-751 Rules and regulations; violations; penalties.**

It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by the Department of Agriculture pursuant to authority granted by the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753, and any person so offending shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

**Source:** Laws 1927, c. 12, art. VIII, § 10, p. 94; C.S.1929, § 54-947; R.S.1943, § 54-751; Laws 1977, LB 39, § 24; Laws 2001, LB 438, § 17; Laws 2006, LB 856, § 22; Laws 2014, LB884, § 10.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-752 Violations; penalties.**

Any person violating any of the provisions of the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753 shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

**Source:** Laws 1927, c. 12, art. VIII, § 13, p. 95; C.S.1929, § 54-950; R.S.1943, § 54-752; Laws 1953, c. 184, § 8, p. 581; Laws 1977, LB 39, § 25; Laws 2001, LB 438, § 18; Laws 2006, LB 856, § 23; Laws 2014, LB884, § 11.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-753 Prevention of disease; writ of injunction available.**

The penal provisions of section 54-752 shall not be exclusive, but the district courts of this state, in the exercise of their equity jurisdiction, may, by injunction, compel the observance of, and by that remedy enforce, the provisions of the Exotic Animal Auction or Exchange Venue Act and sections 54-701 to 54-753 and the rules and regulations established and promulgated by the Department of Agriculture.

**Source:** Laws 1927, c. 12, art. VIII, § 14, p. 95; C.S.1929, § 54-951; R.S.1943, § 54-753; Laws 2001, LB 438, § 19; Laws 2006, LB 856, § 24; Laws 2014, LB884, § 12.

**Cross References**

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

**54-753.06 Transferred to section 54-7,109.**

(f) IMPORT CONTROL

**54-784.01 Act, how cited.**

Sections 54-784.01 to 54-796 shall be known and may be cited as the Animal Importation Act.

**Source:** Laws 1992, LB 366, § 13; Laws 2013, LB647, § 1.

**54-789 Individual identification of cattle; Department of Agriculture; powers; State Veterinarian; powers.**

(1) Except as otherwise provided in this section, individual identification of cattle imported into Nebraska shall not be required if (a) the cattle are identified by a registered brand and accompanied by an official brand inspection certificate issued by the recognized brand inspection authority of the state of origin and (b) such cattle are imported directly from a mandatory brand inspection area of any state.

(2) The Department of Agriculture may require cattle imported into Nebraska to be identified by individual identification to enter the state if the Director of Agriculture determines that:

(a) The state of origin recognized brand registration or brand inspection procedures and documentation are insufficient to enable the tracing of individual animals to the animal's herd of origin;

(b) Identification by brand alone is in conflict with a standard of federal law or regulation regarding identification of cattle moved into Nebraska; or

(c) The cattle originate from a location that is not a tuberculosis accredited-free state or zone pursuant to 9 C.F.R. 77.7 or is not designated a brucellosis Class Free or Class A state or area pursuant to 9 C.F.R. 78.41, as such regulations existed on January 1, 2013.

(3) At no time shall a registered brand inspection certificate be used in lieu of a certificate of veterinary inspection.

(4) This section does not limit the authority of the State Veterinarian to issue import orders imposing additional requirements for animals imported into Nebraska from any state, country, zone, or other area, including requirements relating to identification.

(5) For purposes of this section:

(a) Individual identification means a device or method approved by the Department of Agriculture of uniquely identifying a specific animal to its herd of origin and is not synonymous with official identification; and

(b) Official identification means identifying an animal or group of animals using devices or methods approved by the Veterinary Services Office of the Animal and Plant Health Inspection Service of the United States Department of Agriculture, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

**Source:** Laws 2013, LB647, § 2.

#### (i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

##### **54-7,105 Act, how cited; purpose of sections.**

(1) Sections 54-7,105 to 54-7,110 shall be known and may be cited as the Exotic Animal Auction or Exchange Venue Act.

(2) The purpose of the Exotic Animal Auction or Exchange Venue Act is to require an exotic animal auction or exchange venue organizer to obtain a permit from the department before conducting an exotic animal auction or exchange venue and to maintain records for animal disease tracking purposes. Exotic animals sold at an exotic animal auction or exchange venue are often foreign to the United States or to the State of Nebraska. These exotic animals may carry dangerous, infectious, contagious, or otherwise transmissible dis-

eases, including foreign animal diseases, which could pose a threat to Nebraska's livestock health and the livestock industry.

**Source:** Laws 2006, LB 856, § 6; Laws 2014, LB884, § 13.

**Cross References**

**Definitions,** see section 54-701.03.

**Department of Agriculture,** State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations,** penalties, see section 54-752.

**54-7,105.01 Terms, defined.**

For purposes of the Exotic Animal Auction or Exchange Venue Act:

- (1) Accredited veterinarian has the same meaning as in section 54-701.03;
- (2) Animal has the same meaning as in section 54-701.03;
- (3) Animal welfare organization has the same meaning as in section 54-2503;
- (4) Certificate of veterinary inspection means a legible document approved by the department, either paper copy or electronic, issued by an accredited veterinarian at the point of origin of an animal movement which records the (a) name and address of both consignor and consignee, (b) purpose of animal's movement, (c) destination in the state which includes the street address or enhanced-911 address of the premises, (d) age, breed, sex, and number of animals in the shipment, (e) description of the animals, (f) individual identification, when required, and (g) health examination date of the animals. The certificate of veterinary inspection is an acknowledgment by the accredited veterinarian of the apparent absence of any infectious, dangerous, contagious, or otherwise transmissible disease of any animal sold or offered for sale, purchased, bartered, or other change of ownership at an exotic animal auction or exchange venue;
- (5) Change of ownership means the transfer within the State of Nebraska of possession or control of an animal allowed to be transferred through consignment, sale, purchase, barter, lease, exchange, trade, gift, or any other transfer of possession or control at an exotic animal auction or exchange venue;
- (6) Dangerous disease has the same meaning as in section 54-701.03;
- (7) Department means the Department of Agriculture of the State of Nebraska;
- (8) Domesticated cervine animal has the same meaning as in section 54-701.03;
- (9) Exotic animal means any animal which is not commonly sold through licensed livestock auction markets pursuant to the Livestock Auction Market Act. Such animals shall include, but not be limited to, miniature cattle (bovine), miniature horses, miniature donkeys, sheep (ovine), goats (caprine), alpacas (camelid), llamas (camelid), pot-bellied pigs (porcine), and small mammals, with the exception of cats of the *Felis domesticus* species and dogs of the *Canis familiaris* species. The term also includes birds and poultry. The term does not include beef and dairy cattle, calves, swine, bison, or domesticated cervine animals;
- (10) Exotic animal auction or exchange venue means any event or location, other than a livestock auction market as defined in section 54-1158 or events by an animal welfare organization or at an animal welfare organization location, where (a) an exotic animal is consigned, purchased, sold, traded, bartered, given away, or otherwise transferred, (b) an offer to purchase an exotic animal

is made, (c) an exotic animal is offered to be consigned, sold, traded, bartered, given away, or otherwise transferred, or (d) any other event or location where there is a change of ownership of an exotic animal;

(11) Exotic animal auction or exchange venue organizer means a person in charge of organizing an exotic animal auction or exchange venue event, and may include any person who: (a) Arranges events for third parties to have private sales or trades of exotic animals; (b) organizes or coordinates exotic animal auctions or exchange venues; (c) leases out areas for exotic animal auctions or exchange venues; (d) provides or coordinates other similar arrangements involving exotic animals at retail establishments such as feed and supply stores, farm implement stores, and farm and ranch stores, which allow such sales in or on the premises; or (e) takes exotic animals for consignment on behalf of third parties;

(12) Officially identified means the application of an official identification device or method approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services; and

(13) Poultry has the same meaning as in section 54-701.03.

**Source:** Laws 2014, LB884, § 14.

#### Cross References

Livestock Auction Market Act, see section 54-1156.

### **54-7,106 Permit; notification requirements; application; denial; grounds; prohibited acts.**

(1) Each exotic animal auction or exchange venue organizer shall apply for a permit and notify the department at least thirty days prior to the date on which the exotic animal auction or exchange venue is to be held. An applicant for a permit shall verify upon the application that the applicant has contracted the services of an accredited veterinarian to be present during the exotic animal auction or exchange venue as required under subsection (4) of section 54-7,108. Notification shall include the location, time, and dates of the exotic animal auction or exchange venue and the name and address of the exotic animal auction or exchange venue organizer. Notification shall be made in writing or by facsimile transmission. If a livestock auction market holds an exotic animal auction or exchange venue through its licensed livestock auction market, such livestock auction market shall comply with the Exotic Animal Auction or Exchange Venue Act for purposes of the exotic animal auction or exchange venue.

(2) The department may deny an application for a permit if the application does not satisfy the requirements of subsection (1) of this section, for previous acts or omissions of the applicant in noncompliance with the Exotic Animal Auction or Exchange Venue Act, or upon a determination that the applicant is unable to fulfill the duties and responsibilities of a permittee under the act.

(3) No person shall conduct an exotic animal auction or exchange venue without a permit issued pursuant to this section.

(4) No change of ownership of bovine, camelid, caprine, ovine, or porcine animals may occur at private treaty on the premises where the exotic animal auction or exchange venue is being held for the twenty-four-hour period prior to commencement of the exotic animal auction or exchange venue, nor for

twenty-four hours following such event, unless such animals have a certificate of veterinary inspection at change of ownership.

**Source:** Laws 2006, LB 856, § 7; Laws 2014, LB884, § 15.

**Cross References**

**Definitions**, see section 54-701.03.

**Department of Agriculture**, State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations**, penalties, see section 54-752.

**54-7,107 Records; contents; access by department.**

(1) An exotic animal auction or exchange venue organizer shall maintain records for each exotic animal auction or exchange venue such organizer arranges, organizes, leases areas for, consigns, or otherwise coordinates at least five years after the date of the exotic animal auction or exchange venue. The records shall include:

(a) The name, address, and telephone number of the exotic animal auction or exchange venue organizer;

(b) The name and address of all persons who purchased, sold, traded, bartered, gave away, or otherwise transferred an exotic animal at the exotic animal auction or exchange venue;

(c) The number of and species or type of each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or exchange venue;

(d) The date of purchase, sale, trade, barter, or other transfer of an exotic animal at the exotic animal auction or exchange venue; and

(e) When required by the Animal Importation Act or the Exotic Animal Auction or Exchange Venue Act, a copy of the completed certificate of veterinary inspection for each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or exchange venue.

(2) An exotic animal auction or exchange venue organizer shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his or her exotic animal auction or exchange venue business.

(3) When necessary for the enforcement of the Exotic Animal Auction or Exchange Venue Act or any rules and regulations adopted and promulgated pursuant to such act, the authorized employees and agents of the department may access the records required by this section.

**Source:** Laws 2006, LB 856, § 8; Laws 2014, LB884, § 16.

**Cross References**

**Animal Importation Act**, see section 54-784.01.

**Definitions**, see section 54-701.03.

**Department of Agriculture**, State Veterinarian, powers, see sections 54-703 to 54-705.

**Violations**, penalties, see section 54-752.

**54-7,108 Prohibited transfers; certificate of veterinary inspection; duties of exotic animal auction or exchange venue organizer; requirements for certain animals.**

(1) No beef or dairy cattle, calves, swine, bison, or domesticated cervine animals shall be, or offered to be, consigned, purchased, sold, bartered, traded,



given away, or otherwise transferred at an exotic animal auction or exchange venue.

(2) An exotic animal auction or exchange venue organizer shall contact the department if a particular animal cannot be readily identified as an animal that is prohibited from being consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue under this section.

(3) No bovine, camelid, caprine, ovine, or porcine animal shall be, or be offered to be, consigned, purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or exchange venue unless, prior to a change of ownership or other transfer of the animal, a completed certificate of veterinary inspection for such animal is presented to the exotic animal auction or exchange venue organizer. Such certificate of veterinary inspection shall be signed by an accredited veterinarian on the date of or no more than thirty days prior to the date the exotic animal auction or exchange venue is held.

(4) An exotic animal auction or exchange venue organizer shall contract with an accredited veterinarian to be present during the exotic animal auction or exchange venue for visually inspecting such exotic animals and to issue necessary certificates of veterinary inspection for change of ownership when required by the Animal Importation Act or the Exotic Animal Auction or Exchange Venue Act.

(5) All dairy goats imported into Nebraska shall have an official tuberculin test prior to import into Nebraska. All sheep and goats shall have official identification as required under the Scrapie Control and Eradication Act.

(6) A copy of the certificate of veterinary inspection shall be submitted to the department by the exotic animal auction or exchange venue organizer within seven days from the date the exotic animal auction or exchange venue was held.

(7) Any bovine, camelid, caprine, ovine, or porcine animal which is not prohibited from transfer at an exotic animal auction or exchange venue shall be officially identified prior to change of ownership.

**Source:** Laws 2006, LB 856, § 9; Laws 2014, LB884, § 17.

#### Cross References

**Animal Importation Act**, see section 54-784.01.

**Definitions**, see section 54-701.03.

**Department of Agriculture**, State Veterinarian, powers, see sections 54-703 to 54-705.

**Scrapie Control and Eradication Act**, see section 54-2701.

**Violations**, penalties, see section 54-752.

### **54-7,109 Compliance with game laws required.**

Compliance with the Exotic Animal Auction or Exchange Venue Act does not relieve a person of the requirement to comply with the provisions of sections 37-477 to 37-479.

**Source:** Laws 2006, LB 856, § 10; R.S.1943, (2010), § 54-753.06; Laws 2014, LB884, § 18.

### **54-7,110 Act; enforcement; rules and regulations; penalties.**

(1) The Exotic Animal Auction or Exchange Venue Act shall be enforced by the department as provided in sections 54-703 to 54-705.

(2) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of the act. The rules and regulations may include, but are not limited to, provisions governing record keeping and any other requirements necessary for the enforcement of the act.

(3) Penalties and remedies for violations of the act and any rules and regulations adopted and promulgated pursuant to the act are in sections 54-751 to 54-753.

**Source:** Laws 2014, LB884, § 19.

## ARTICLE 8

### COMMERCIAL FEED

#### Section

54-850. Manufacturer or distributor; license required; application; fee; posting; exception; cancellation.

54-856. Inspection fees; administrative fee; statement and records required.

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

#### **54-850 Manufacturer or distributor; license required; application; fee; posting; exception; cancellation.**

(1) No person shall manufacture or distribute commercial feed in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial feed in the State of Nebraska.

(2) Application for a license shall be made to the department on forms prescribed and furnished by the department. The application shall be accompanied by an annual license fee of fifteen dollars. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) This section shall not apply to any person who distributes less than a five-ton volume of commercial feed annually.

(5) The director may refuse to issue a license for any commercial feed facility not in compliance with the Commercial Feed Act and may cancel any license subsequently found not in compliance with such act. No license shall be refused or canceled unless the applicant has been given an opportunity to be heard before the director.

**Source:** Laws 1986, LB 322, § 4; Laws 1997, LB 752, § 133; Laws 2016, LB909, § 4.

Effective date July 21, 2016.

#### **54-856 Inspection fees; administrative fee; statement and records required.**

(1) There shall be paid to the director an inspection fee of ten cents per ton on all commercial feed distributed in the State of Nebraska during the six-month period following January 1, 1987. After the first six months of operation, the fee may be raised or lowered by the director after a public hearing is held outlining the reason for any proposed change in the rate. The maximum rate fixed by the director shall not exceed fifteen cents per ton. The inspection fee

shall be paid on commercial feed distributed by the person whose name appears on the label as the manufacturer, guarantor, or distributor, except that a person other than the manufacturer, guarantor, or distributor may assume liability for the inspection fee, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;

(b) No fee shall be paid on customer-formula feed if the inspection fee is paid on the commercial feed which is used as ingredients therein;

(c) No fee shall be paid on commercial feed used as ingredients for the manufacture of other commercial feed. If the fee has already been paid, credit shall be given for such payment;

(d) In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee fixed by the director, not to exceed twenty-five dollars, shall be paid in lieu of the inspection fee. The annual fee shall be paid not later than the last day of January each year; and

(e) The minimum inspection fee shall be five dollars for any six-month reporting period.

(2) If the director determines that it is necessary to adjust the rate of the inspection fee being paid to the department, all persons holding a valid license issued pursuant to section 54-850 shall be so notified and shall be given an opportunity to offer comment at a public hearing which shall be required prior to any inspection fee rate change.

(3) Each person who is liable for the payment of such fee shall:

(a) File, not later than January 31 and July 31 of each year, a semiannual statement setting forth the number of tons of commercial feed distributed in this state during the preceding six-month period, which statement shall cover the periods from July 1 to December 31 and January 1 to June 30, and upon filing such statement, pay the inspection fee at the rate specified by this section. Any person who holds a valid license issued pursuant to section 54-850 and whose name appears on the label as the manufacturer, guarantor, or distributor shall file such statement regardless of whether any inspection fee is due. Inspection fees which are due and owing and have not been remitted to the director within fifteen days following the date due shall have an administrative fee of twenty-five percent of the fees due added to the amount due when payment is made, and an additional administrative fee of twenty-five percent of the fees due shall be added if such inspection and administrative fees are not paid within thirty days of the due date. The purpose of the additional administrative fees is to cover the administrative costs associated with collecting fees. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Commercial Feed Administration Cash Fund. The assessment of this administrative fee shall not prevent the director from taking other actions as provided in the Commercial Feed Act; and

(b) Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state. The director shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement, to pay the inspection fee, or to

comply as provided in this section shall constitute sufficient cause for the cancellation of all licenses on file.

**Source:** Laws 1986, LB 322, § 10; Laws 1992, LB 366, § 18; Laws 2016, LB909, § 5.

Effective date July 21, 2016.

**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, to provide resources to prepare the Nebraska dairy industry report as provided in section 2-3993, 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; Laws 2014, LB941, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 9**

**LIVESTOCK ANIMAL WELFARE ACT**

**Section**

54-901. Act, how cited.

54-902. Terms, defined.

54-905. Court order for reimbursement of expenses; liability for expenses; lien.

54-906. Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; custody agreement; law enforcement officer; powers; duties; liability.

54-913. Livestock animal seized; hearing to determine disposition and cost; notice; court order; appeal; euthanasia.

**54-901 Act, how cited.**

Sections 54-901 to 54-913 shall be known and may be cited as the Livestock Animal Welfare Act.

**Source:** Laws 2010, LB865, § 1; Laws 2013, LB423, § 5.

**54-902 Terms, defined.**

For purposes of the Livestock Animal Welfare Act:

(1) Abandon means to leave a livestock animal in one's care, whether as owner or custodian, for any length of time without making effective provision

for the livestock animal's feed, water, or other care as is reasonably necessary for the livestock animal's health;

(2) Animal welfare practice means veterinarian practices and animal husbandry practices common to the livestock animal industry, including transport of livestock animals from one location to another;

(3) Bovine means a cow, an ox, or a bison;

(4) Cruelly mistreat means to knowingly and intentionally kill or cause physical harm to a livestock animal in a manner that is not consistent with animal welfare practices;

(5) Cruelly neglect means to fail to provide a livestock animal in one's care, whether as owner or custodian, with feed, water, or other care as is reasonably necessary for the livestock animal's health;

(6) Equine means a horse, pony, donkey, mule, or hinny;

(7) Euthanasia means the destruction of a livestock animal by commonly accepted veterinary practices;

(8) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local laws, rules, regulations, or ordinances;

(9) Livestock animal means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, llamas, or poultry;

(10) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person; and

(11) Serious injury or illness includes any injury or illness to any livestock animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

**Source:** Laws 2010, LB865, § 2; Laws 2013, LB423, § 6.

**54-905 Court order for reimbursement of expenses; liability for expenses; lien.**

(1) In addition to any other sentence given for a violation of section 54-903 or 54-904, the sentencing court may order the defendant to reimburse a public or private agency for any unreimbursed expenses incurred in conjunction with the care, seizure, or disposal of a livestock animal involved in the violation of such section. Whenever the court believes that such reimbursement is a proper sentence or at the prosecuting attorney's request, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all expenses incurred by a public or private agency in conjunction with the care, seizure, or disposal of a livestock animal. The expenses shall be a lien upon the livestock animal.

**Source:** Laws 2010, LB865, § 5; Laws 2013, LB423, § 7.

**54-906 Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; custody agreement; law enforcement officer; powers; duties; liability.**

(1) A law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the livestock animal.

(2) A law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner or custodian as prescribed in sections 29-422 to 29-429.

(3) A law enforcement officer may specify in a custody agreement the terms and conditions by which the owner or custodian may maintain custody of the livestock animal to provide care for such animal at the expense of the owner or custodian. The custody agreement shall be signed by the owner or custodian of the livestock animal. A copy of the signed agreement shall be provided to the owner or custodian of the livestock animal. A violation of the custody agreement may result in the seizure of the livestock animal.

(4) Any equipment, device, or other property or things involved in a violation of section 54-903 or 54-904 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct. Any livestock animal involved in a violation of section 54-903 or 54-904 shall be subject to seizure. Distribution or disposition shall be made under section 54-913 as the court may direct. Any livestock animal seized under this subsection may be kept by the law enforcement officer on the property of the owner or custodian of such livestock animal.

(5) A law enforcement officer may euthanize or cause a livestock animal seized or kept pursuant to this section to be euthanized if the animal is severely emaciated, injured, disabled, or diseased past recovery for any useful purpose. The law enforcement officer shall notify the owner or custodian prior to the euthanasia if practicable under the circumstances. An owner or custodian may request that a veterinarian of the owner's or custodian's choosing view the livestock animal and be present upon examination of the livestock animal, and no livestock animal shall be euthanized without reasonable accommodation to provide for the presence of the owner's or custodian's veterinarian when requested. However, attempted notification of the owner or custodian or the presence of the owner's or custodian's veterinarian shall not unduly delay euthanasia when necessary. The law enforcement officer may forgo euthanasia if the care of the livestock animal is placed with the owner's or custodian's veterinarian.

(6) A law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

**Source:** Laws 2010, LB865, § 6; Laws 2013, LB423, § 8.

**54-913 Livestock animal seized; hearing to determine disposition and cost; notice; court order; appeal; euthanasia.**

(1) After a livestock animal has been seized, the agency that took custody of the livestock animal shall, within seven days after the date of seizure, file a complaint with the district court in the county in which the animal was seized



for a hearing to determine the disposition and the cost for the care of the livestock animal. Notice of such hearing shall be given to the owner or custodian from whom such livestock animal was seized and to any holder of a lien or security interest of record in such livestock animal, specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such livestock animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(2) If the court finds that probable cause exists that the livestock animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the livestock animal to the agency that took custody of the livestock animal and authorize appropriate disposition of the livestock animal, including sale at public auction, adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. With respect to sale of a livestock animal, the proceeds shall first be applied to the cost of sale and then to the expenses for the care of the livestock animal and the remaining proceeds, if any, shall be paid to the holder of a lien or security interest of record in such livestock animal and then to the owner of the livestock animal;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the livestock animal shall be returned to the owner or custodian from whom the livestock animal was seized or to any other person claiming an interest in the livestock animal. Such order may include any management actions deemed necessary and prudent by the court, including culling by sale, humane disposal, or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining livestock animal; or

(c) Order the owner or custodian from whom the livestock animal was seized to post a bond or other security, or to otherwise order payment, in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the livestock animal, including veterinary care, incurred by the agency from the date of seizure and necessitated by the possession of the livestock animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent succeeding thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the livestock animal. The agency shall provide an accounting of expenses to the court when the livestock animal is no longer in the custody of the agency or upon request by the court. The agency may petition the court for a subsequent hearing under this subsection at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted or if a person becomes delinquent in his or her payments for the expenses of the livestock animal, the livestock animal shall be forfeited to the agency.

(3) If custody of a livestock animal is returned to the owner or custodian of the livestock animal prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the livestock animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(4) Nothing in this section shall prevent the euthanasia of a seized livestock animal at any time as determined necessary by a law enforcement officer or as authorized by court order.

(5) An appeal may be entered within ten days after a hearing under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the livestock animal for thirty days. Such payment will be required for each succeeding thirty-day period until the appeal is final.

(6) If the owner or custodian from whom the livestock animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the livestock animal remaining after the actual expenses incurred by the agency have been paid shall be returned to such person.

(7) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

**Source:** Laws 2013, LB423, § 9.

## ARTICLE 11

### LIVESTOCK AUCTION MARKET ACT

#### Section

54-1156.	Act, how cited.
54-1158.	Terms, defined.
54-1159.	Exemptions from act.
54-1160.	Repealed. Laws 2013, LB 78, § 23.
54-1160.01.	Brand inspection.
54-1161.	License required; application for license; contents.
54-1162.	Hearing; notice.
54-1163.	Hearing; determination; factors; issuance of license.
54-1165.	License fee; payments; disposition.
54-1166.	Livestock auction markets; license personal to holder; transfer; posting; termination.
54-1168.	Records required; available for inspection.
54-1169.	Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.
54-1170.	Director; audio recording; appeal; procedure.
54-1172.	Livestock Auction Market Fund; creation; use; investment.
54-1173.	Livestock Auction Market Fund; license and permit fees; occupation tax; use.
54-1174.	Repealed. Laws 2014, LB 884, § 34.
54-1177.	Repealed. Laws 2014, LB 884, § 34.
54-1180.	Inspection of livestock; duties; fees; use; disposition; notice of change.
54-1181.	Veterinarians; agreement for services; contents; compensation; liability.
54-1182.	Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.
54-1183.	Transferred to section 54-1,129.
54-1184.	Transferred to section 54-1,130.
54-1185.	Transferred to section 54-1,131.

#### **54-1156 Act, how cited.**

Sections 54-1156 to 54-1182 shall be known and may be cited as the Livestock Auction Market Act.

**Source:** Laws 1963, c. 319, § 32, p. 973; Laws 1985, LB 97, § 3; R.S.1943, (1998), § 54-1186; Laws 1999, LB 778, § 78; Laws 2001, LB 197, § 5; Laws 2014, LB884, § 20.

#### **54-1158 Terms, defined.**

As used in the Livestock Auction Market Act, unless the context otherwise requires:

- (1) Accredited veterinarian has the same meaning as in section 54-701.03;
- (2) Department means the Department of Agriculture;
- (3) Designated veterinarian means an accredited veterinarian who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation whether such livestock is moved in interstate or intrastate commerce;
- (4) Director means the Director of Agriculture;
- (5) Livestock means cattle, calves, swine, sheep, and goats;
- (6) Livestock auction market means any place, establishment, or facility commonly known as a livestock auction market, sales ring, or the like, conducted or operated for compensation as an auction market for livestock, consisting of pens or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment;
- (7) Livestock auction market operator means any person engaged in the business of conducting or operating a livestock auction market, whether personally or through agents or employees;
- (8) Market license means the license for a livestock auction market authorized to be issued under the act;
- (9) Person means any individual, firm, association, partnership, limited liability company, or corporation; and
- (10) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the director.

**Source:** Laws 1963, c. 319, § 2, p. 962; Laws 1993, LB 121, § 340; Laws 1999, LB 778, § 63; Laws 2001, LB 197, § 7; Laws 2013, LB78, § 1; Laws 2014, LB884, § 21.

#### **54-1159 Exemptions from act.**

- (1) The Livestock Auction Market Act shall not be construed to include:
  - (a) Any place or operation where Future Farmers of America, 4-H groups, or private fairs conduct sales of livestock;
  - (b) An animal welfare organization as defined in section 54-2503;
  - (c) Any place or operation conducted for a dispersal sale of the livestock of farmers, dairymen, or livestock breeders or feeders, where no other livestock is sold or offered for sale; or
  - (d) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any

livestock, when such breeders assume all responsibility of such sale and the title of livestock sold. This shall apply to all purebred livestock association sales.

(2) An exotic animal auction or exchange venue or an exotic animal auction or exchange venue organizer as defined in section 54-7,105.01 is not required to be licensed under the Livestock Auction Market Act if any bovine, camelid, caprine, ovine, or porcine allowed to be sold under the Exotic Animal Auction or Exchange Venue Act are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian and the exotic animal auction or exchange venue organizer contracts for the services of an accredited veterinarian to issue such certificates onsite during the auction or exchange venue for bovine, camelid, caprine, ovine, or porcine present.

**Source:** Laws 1963, c. 319, § 3, p. 962; Laws 1999, LB 778, § 64; Laws 2001, LB 197, § 8; Laws 2014, LB884, § 22.

#### Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

### **54-1160 Repealed. Laws 2013, LB 78, § 23.**

#### **54-1160.01 Brand inspection.**

The owner or operator of any livestock auction market located in any county outside the brand inspection area created in section 54-1,109 may voluntarily elect to provide brand inspection as provided in sections 54-1,129 to 54-1,131.

**Source:** Laws 2014, LB884, § 23.

#### **54-1161 License required; application for license; contents.**

No person shall conduct or operate a livestock auction market unless he or she holds a market license therefor, upon which the current annual market license fee has been paid. Any person making application for a new market license shall do so to the director in writing, verified by the applicant, on a form prescribed by the department, showing the following:

(1) The name and address of the applicant with a statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest;

(2) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(3) A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such livestock auction market;

(4) The schedule of charges an applicant proposes for all services proposed to be rendered; and

(5) A detailed statement of the facts upon which the applicant relies showing the general confines of the trade area proposed to be served by such livestock auction market, the benefits to be derived by the livestock industry, and the services proposed to be rendered.

Such application shall be accompanied by the annual fee as prescribed in section 54-1165.

**Source:** Laws 1963, c. 319, § 5, p. 964; Laws 1997, LB 752, § 134; Laws 2013, LB78, § 2; Laws 2014, LB884, § 24.

**54-1162 Hearing; notice.**

Upon the filing of the application as provided in section 54-1161, the director shall fix a reasonable time for the hearing at a place designated by him or her at which time a hearing shall be held on the proposed location of the livestock auction market. The director forthwith shall cause a copy of such application, together with notice of the time and place of hearing, to be served by mail not less than fifteen days prior to such hearing, upon the following:

(1) All duly organized statewide livestock associations in the state who have filed written requests with the department to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application; and

(2) All livestock auction market operators in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or village where such hearing is to be held, as in the opinion of the director will give reasonable public notice of such time and place of hearing to persons interested therein.

**Source:** Laws 1963, c. 319, § 6, p. 964; Laws 2001, LB 197, § 10; Laws 2013, LB78, § 3.

**54-1163 Hearing; determination; factors; issuance of license.**

The hearing required by section 54-1162 shall be heard by the director. If the director determines, after such hearing, that the proposed livestock auction market would beneficially serve the livestock economy, the department shall issue a market license to the applicant. In determining whether or not the application should be granted or denied, reasonable consideration shall be given to:

(1) The ability of the applicant to comply with the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended;

(2) The financial stability, business integrity, and fiduciary responsibility of the applicant;

(3) The adequacy of the facilities described to permit the performance of market services proposed in the application;

(4) The present needs for market services or additional services as expressed by livestock growers and feeders in the community; and

(5) Whether the proposed livestock auction market would be permanent and continuous.

**Source:** Laws 1963, c. 319, § 7, p. 965; Laws 1999, LB 778, § 66; Laws 2013, LB78, § 4; Laws 2014, LB884, § 25.

**54-1165 License fee; payments; disposition.**

Every livestock auction market operator shall pay annually, on or before August 1, a market license fee of one hundred fifty dollars to the department for each livestock auction market operated by him or her, which payment shall constitute a renewal for one year. Fees so paid shall be remitted to the State

Treasurer for credit to the Livestock Auction Market Fund for the expenses of administration of the Livestock Auction Market Act.

**Source:** Laws 1963, c. 319, § 9, p. 966; Laws 1983, LB 617, § 9; Laws 1999, LB 778, § 67; Laws 2001, LB 197, § 11; Laws 2013, LB78, § 5.

**54-1166 Livestock auction markets; license personal to holder; transfer; posting; termination.**

Except as otherwise provided in this section, each market license shall be personal to the holder and the facilities covered thereby and transferable without a hearing. The original or a certified copy of such license shall be posted during sale periods in a conspicuous place on the premises where the livestock auction market is conducted. The market license covering any livestock auction market which does not hold a sale for a period of one year shall terminate automatically one year from the date of the last sale conducted by the livestock auction market, and the license holder whose license is so terminated may request a hearing by filing a written request for such hearing within twenty days after the termination of the license.

**Source:** Laws 1963, c. 319, § 10, p. 966; Laws 1985, LB 97, § 2; Laws 2014, LB884, § 26.

**54-1168 Records required; available for inspection.**

Every market license holder under the Livestock Auction Market Act shall keep an accurate record of all transactions conducted in the ordinary course of his or her business. Such records shall be available for examination of the director, or his or her duly authorized representative, in respect to a market license issued under such act.

**Source:** Laws 1963, c. 319, § 12, p. 966; Laws 1999, LB 778, § 68; Laws 2001, LB 197, § 12; Laws 2013, LB78, § 6.

**54-1169 Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.**

(1) The department may, upon its own motion, whenever it has reason to believe the Livestock Auction Market Act has been violated, or upon verified complaint of any person in writing, investigate the actions of any market license holder, and if the department finds probable cause to do so, shall file a complaint against the market license holder which shall be set down for hearing before the director upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail prior to such hearing.

(2) The director shall have the power to administer oaths, certify to all official acts, and subpoena any person in this state as a witness, to compel the producing of books and papers, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness who shall appear by the order of the director at any hearing shall receive for such attendance the same fees allowed by law to witnesses in civil cases appearing in the district court and mileage at the same rate provided in section 81-1176, which amount shall be paid by the party at



whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but has been subpoenaed by the director, his or her fees and mileage shall be paid by the director in the same manner as other expenses are paid under the Livestock Auction Market Act.

(3) All powers of the director as provided in this section shall likewise be applicable to hearings held on applications for the issuance of a market license.

(4) Formal finding by the director after due hearing that any market license holder (a) has ceased to conduct a livestock auction market business, (b) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock, (c) has violated any of the provisions of the Livestock Auction Market Act, or (d) has violated any of the rules or regulations adopted and promulgated under the act, shall be sufficient cause for the suspension or revocation of the market license of the offending livestock auction market operator.

**Source:** Laws 1963, c. 319, § 13, p. 966; Laws 1981, LB 204, § 95; Laws 1999, LB 778, § 69; Laws 2001, LB 197, § 13; Laws 2013, LB78, § 7; Laws 2014, LB884, § 27.

#### **54-1170 Director; audio recording; appeal; procedure.**

The director shall keep an audio recording of all proceedings and evidence presented in any hearing under the Livestock Auction Market Act. The applicant for a market license, any protestant formally appearing in the hearing for such market license, the holder of any market license suspended or revoked, or any party to a transfer application may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1963, c. 319, § 14, p. 968; Laws 1988, LB 352, § 95; Laws 2013, LB78, § 8; Laws 2014, LB884, § 28.

#### **Cross References**

**Administrative Procedure Act**, see section 84-920.

#### **54-1172 Livestock Auction Market Fund; creation; use; investment.**

Salaries and expenses of employees, costs of hearings, and all other costs of administration of the Livestock Auction Market Act shall be paid from the Livestock Auction Market Fund which is hereby created. Any money in the Livestock Auction Market 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. 319, § 16, p. 969; Laws 1999, LB 778, § 71; Laws 2001, LB 197, § 15; Laws 2013, LB78, § 9.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

#### **54-1173 Livestock Auction Market Fund; license and permit fees; occupation tax; use.**

The license and permit fees collected as provided by the Livestock Auction Market Act are an occupation tax and shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of

administering such act and shall be paid out only on vouchers approved by the director and upon the warrant or warrants issued by the Director of Administrative Services. Any unexpended balance in such fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium.

**Source:** Laws 1963, c. 319, § 17, p. 969; Laws 1969, c. 584, § 54, p. 2379; Laws 1995, LB 7, § 58; Laws 1999, LB 778, § 72; Laws 2001, LB 197, § 16; Laws 2014, LB884, § 29.

**54-1174 Repealed. Laws 2014, LB 884, § 34.**

**54-1177 Repealed. Laws 2014, LB 884, § 34.**

**54-1180 Inspection of livestock; duties; fees; use; disposition; notice of change.**

All cattle, calves, swine, sheep, and goats, upon entering a livestock auction market, shall be inspected for health before being offered for sale. Such inspection shall be made by a designated veterinarian. The fees for such inspection shall be established by rules and regulations of the department and shall be collected by the operator of the livestock auction market. Such fees shall be used to pay the fees of necessary inspections and for no other purpose and shall be remitted as may be provided by regulation. The fees shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund and shall be expended exclusively to pay the fees of providing necessary inspections at the livestock auction market which has remitted such fees. Each designated veterinarian making market inspections shall be paid twenty-five dollars for each regularly scheduled sale day in each calendar month as a guaranteed minimum salary for providing adequate inspection services. If the fees collected each calendar month by the market operator do not equal such amount, the market operator shall make up the difference in his or her remittance to the state. The rules and regulations establishing fees for such inspection shall not be adopted, amended, or repealed until after notice by mail to each market licensee and designated veterinarian of the time and place of hearing on the question of adoption, amendment, or repeal of such rules and regulations; such notice shall be mailed at least ten days prior to the date of hearing and shall be sufficient if addressed to the last-known address of each market licensee and designated veterinarian shown on the records of the department.

**Source:** Laws 1963, c. 319, § 24, p. 971; Laws 1965, c. 334, § 5, p. 956; Laws 1969, c. 454, § 1, p. 1543; Laws 2001, LB 197, § 20; Laws 2014, LB884, § 30.

**54-1181 Veterinarians; agreement for services; contents; compensation; liability.**

The State Veterinarian shall make the designation of the veterinarians required by sections 54-1180 and 54-1182 by entering into an agreement with any accredited veterinarian for his or her professional services in performing necessary inspections. Such agreement shall provide that the State Veterinarian may terminate it at any time for what he or she deems to be just cause and shall further provide that the state pay such veterinarian a fee as established by section 54-1180, which amount shall be paid monthly from the Livestock

Auction Market Fund. Such agreement shall make the designated veterinarian an agent for the Department of Agriculture to perform the duties assigned by sections 54-1180 and 54-1182, and the rules and regulations prescribed by the department, but shall not be deemed to make the designated veterinarian an officer or employee of the state. The orders of such designated veterinarian, issued in the performance of the duties assigned under sections 54-1180 and 54-1182 and the rules and regulations prescribed by the department, shall have the same force and effect as though such order had been made by the State Veterinarian. Designated veterinarians shall not be liable for reasonable acts performed to carry out the duties as set forth in sections 54-1180 and 54-1182 and the rules and regulations prescribed by the department pursuant to such sections.

**Source:** Laws 1963, c. 319, § 25, p. 971; Laws 1965, c. 334, § 6, p. 957; Laws 1969, c. 454, § 2, p. 1544; Laws 2001, LB 197, § 21; Laws 2014, LB884, § 31.

**54-1182 Livestock sold; treatment by veterinarians; release; documentation; rules and regulations.**

Any livestock sold or disposed of at a livestock auction market, before removal therefrom, shall be released by the designated veterinarian and treated to conform with the health requirements of the rules and regulations prescribed by the department for the movement of livestock. When required, the designated veterinarian shall furnish each owner with documentation showing such inspection, treatment, or quarantine. No such livestock for interstate or intrastate shipment shall be released until all the requirements of the state of its destination have been complied with. Any diseased or exposed livestock shall be handled in accordance with the rules and regulations as prescribed by the department.

**Source:** Laws 1963, c. 319, § 26, p. 972; Laws 1965, c. 334, § 7, p. 957; Laws 1999, LB 778, § 75; Laws 2001, LB 197, § 22; Laws 2003, LB 160, § 8; Laws 2014, LB884, § 32.

**54-1183 Transferred to section 54-1,129.**

**54-1184 Transferred to section 54-1,130.**

**54-1185 Transferred to section 54-1,131.**

**ARTICLE 13**

**BRUCELLOSIS**

(c) NEBRASKA BOVINE BRUCELLOSIS ACT

Section

- 54-1371. Brucellosis testing; owner responsibilities; violation; penalty; costs; administrative fee; Brucellosis Control Cash Fund; created; use; investment.
- 54-1382. Department; adopt rules and regulations.

(c) NEBRASKA BOVINE BRUCELLOSIS ACT

**54-1371 Brucellosis testing; owner responsibilities; violation; penalty; costs; administrative fee; Brucellosis Control Cash Fund; created; use; investment.**

(1) Whenever brucellosis testing is performed under section 54-1369 with respect to a sale at private treaty or under section 54-1370, the owner of the animals shall be responsible for gathering, confining, and restraining the animals to be tested and shall provide the necessary facilities and assistance. With respect to tests conducted at markets, concentration points, or slaughter establishments, the responsibility shall be borne by the owner of the establishment.

(2) Any person failing to carry out the responsibilities set out under subsection (1) of this section shall be guilty of a Class IV misdemeanor.

(3) Whenever any person fails to carry out the responsibilities set out under subsection (1) of this section, the department shall perform such functions. Upon completion of the testing, the department shall determine its actual costs incurred in handling the livestock and conducting the testing and notify the responsible person in writing. The responsible person shall reimburse the department its actual costs within fifteen days following the date of the notice. Any person failing to reimburse the department as required shall be assessed an administrative fee of up to twenty-five percent of the amount due for each thirty days of delinquency. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting the actual costs incurred and any administrative fees.

(4) All money received by the department under subsection (3) of this section shall be remitted to the State Treasurer for credit to the Brucellosis Control Cash Fund, which fund is hereby created. Expenditures from the fund may be made to conduct brucellosis testing under the Nebraska Bovine Brucellosis 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 1983, LB 573, § 5; Laws 1995, LB 7, § 59; Laws 2016, LB909, § 6.  
Effective date July 21, 2016.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **54-1382 Department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations to aid in implementing the Nebraska Bovine Brucellosis Act. The rules and regulations may include, but need not be limited to, provisions governing:

(1) The conduct of the market livestock testing program, including provisions governing when, where, how, and by whom testing is to be done; what animals are to be tested; and how test results are to be recorded and reported;

(2) The conduct of the brucellosis eradication program, including when, where, how, by whom, and how often testing is to be done; what animals are to be tested; and how test results are to be recorded and reported. The rules and regulations may also include provisions designed to maintain or enhance the federal designation of brucellosis areas within the state and provisions for certifying herds for brucellosis status;

(3) The issuance and release of brucellosis quarantines and the requirements regarding the handling, movement, and disposition of livestock under quarantine;

(4) The testing of livestock to detect brucellosis, including which tests are to be deemed official, by whom the tests are to be administered, how the tests are to be conducted, the reaction tolerances to be recognized, and the classification of results as to negative, suspect, or reactor animals. The rules and regulations shall be consistent with the best available scientific information relative to the control and eradication of brucellosis;

(5) The assessment of administrative fees under subsection (3) of section 54-1371;

(6) The branding and disposition of reactors, including the brand to be used and how it is to be placed, and when and how branding and shipment to slaughter are to be performed;

(7) The branding and handling of exposed animals, including the brand to be used and how it is to be placed, and when and how branding and movement are to be performed;

(8) The cleaning and disinfecting of premises, including the materials to be used, the procedures to be used, and when such procedures are to be performed;

(9) The official brucellosis vaccination program, including the vaccines allowed to be used, the permitted concentrations, the age of the animals to be vaccinated, the effect of vaccination on the interpretation of test results, and the sale and use of vaccine;

(10) The identification of animals subject to the act, including exposed and infected animals, vaccinated animals, and animals tested and to be tested;

(11) The issuance of permits under section 54-1378;

(12) Compliance with the provisions of the Uniform Methods and Rules for Brucellosis Eradication;

(13) The payment for activities and services conducted under the act;

(14) The preparation, maintenance, handling, and filing of records and reports by persons subject to the act, regarding activities performed in accordance with the act, including the vaccination, testing, branding, or movement of animals that may have been infected with or exposed to brucellosis; and

(15) Any other areas deemed necessary by the department to effectively control and eradicate brucellosis.

**Source:** Laws 1983, LB 573, § 16; Laws 1993, LB 1, § 2; Laws 2016, LB909, § 7.

Effective date July 21, 2016.

## ARTICLE 14

### SCABIES

#### Section

54-1401. Repealed. Laws 2015, LB 91, § 1.

54-1402. Repealed. Laws 2015, LB 91, § 1.

54-1403. Repealed. Laws 2015, LB 91, § 1.

54-1404. Repealed. Laws 2015, LB 91, § 1.

54-1405. Repealed. Laws 2015, LB 91, § 1.

Section

- 54-1406. Repealed. Laws 2015, LB 91, § 1.
- 54-1407. Repealed. Laws 2015, LB 91, § 1.
- 54-1408. Repealed. Laws 2015, LB 91, § 1.
- 54-1409. Repealed. Laws 2015, LB 91, § 1.
- 54-1410. Repealed. Laws 2015, LB 91, § 1.
- 54-1411. Repealed. Laws 2015, LB 91, § 1.

**54-1401 Repealed. Laws 2015, LB 91, § 1.**

**54-1402 Repealed. Laws 2015, LB 91, § 1.**

**54-1403 Repealed. Laws 2015, LB 91, § 1.**

**54-1404 Repealed. Laws 2015, LB 91, § 1.**

**54-1405 Repealed. Laws 2015, LB 91, § 1.**

**54-1406 Repealed. Laws 2015, LB 91, § 1.**

**54-1407 Repealed. Laws 2015, LB 91, § 1.**

**54-1408 Repealed. Laws 2015, LB 91, § 1.**

**54-1409 Repealed. Laws 2015, LB 91, § 1.**

**54-1410 Repealed. Laws 2015, LB 91, § 1.**

**54-1411 Repealed. Laws 2015, LB 91, § 1.**

**ARTICLE 15**

**HOG CHOLERA**

(a) DESTRUCTION OF HOGS

Section

- 54-1501. Repealed. Laws 2015, LB 91, § 1.
- 54-1503. Repealed. Laws 2015, LB 91, § 1.
- 54-1505. Repealed. Laws 2015, LB 91, § 1.
- 54-1508. Repealed. Laws 2015, LB 91, § 1.
- 54-1509. Repealed. Laws 2015, LB 91, § 1.
- 54-1510. Repealed. Laws 2015, LB 91, § 1.
- 54-1511. Repealed. Laws 2015, LB 91, § 1.
- 54-1512. Repealed. Laws 2015, LB 91, § 1.

(b) CONTROL AND ERADICATION

- 54-1513. Repealed. Laws 2015, LB 91, § 1.
- 54-1514. Repealed. Laws 2015, LB 91, § 1.
- 54-1515. Repealed. Laws 2015, LB 91, § 1.
- 54-1516. Repealed. Laws 2015, LB 91, § 1.
- 54-1517. Repealed. Laws 2015, LB 91, § 1.
- 54-1518. Repealed. Laws 2015, LB 91, § 1.
- 54-1519. Repealed. Laws 2015, LB 91, § 1.
- 54-1520. Repealed. Laws 2015, LB 91, § 1.
- 54-1521. Repealed. Laws 2015, LB 91, § 1.

(c) SALES AND SHIPMENTS

- 54-1522. Repealed. Laws 2015, LB 91, § 1.
- 54-1523. Repealed. Laws 2015, LB 91, § 1.



## (a) DESTRUCTION OF HOGS

54-1501 Repealed. Laws 2015, LB 91, § 1.

54-1503 Repealed. Laws 2015, LB 91, § 1.

54-1505 Repealed. Laws 2015, LB 91, § 1.

54-1508 Repealed. Laws 2015, LB 91, § 1.

54-1509 Repealed. Laws 2015, LB 91, § 1.

54-1510 Repealed. Laws 2015, LB 91, § 1.

54-1511 Repealed. Laws 2015, LB 91, § 1.

54-1512 Repealed. Laws 2015, LB 91, § 1.

## (b) CONTROL AND ERADICATION

54-1513 Repealed. Laws 2015, LB 91, § 1.

54-1514 Repealed. Laws 2015, LB 91, § 1.

54-1515 Repealed. Laws 2015, LB 91, § 1.

54-1516 Repealed. Laws 2015, LB 91, § 1.

54-1517 Repealed. Laws 2015, LB 91, § 1.

54-1518 Repealed. Laws 2015, LB 91, § 1.

54-1519 Repealed. Laws 2015, LB 91, § 1.

54-1520 Repealed. Laws 2015, LB 91, § 1.

54-1521 Repealed. Laws 2015, LB 91, § 1.

## (c) SALES AND SHIPMENTS

54-1522 Repealed. Laws 2015, LB 91, § 1.

54-1523 Repealed. Laws 2015, LB 91, § 1.

## ARTICLE 17

## LIVESTOCK DEALER LICENSING ACT

## Section

54-1704. Livestock dealer; license; application; bond; form; renewal; fee; disposition.

**54-1704 Livestock dealer; license; application; bond; form; renewal; fee; disposition.**

No person as defined in the Nebraska Livestock Dealer Licensing Act as a livestock dealer shall:

(1) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without a valid and effective license issued by the Director of Agriculture under the provisions of this section. All applications for a livestock

dealer license or renewal of such license shall be made on forms prescribed for that purpose by the State Veterinarian. The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year with the applicable fee of fifty dollars. The license fees collected as provided by the Nebraska Livestock Dealer Licensing Act shall be deposited in the state treasury, and by the State Treasurer placed in the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering the provisions of the Nebraska Livestock Dealer Licensing Act;

(2)(a) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without filing with the department, in connection with his or her application for a license, a fully executed duplicate of a valid and effective bond: (i) If he or she is registered and bonded under the provisions of the federal Packers and Stockyards Act of 1921, 7 U.S.C. 181 et seq., he or she shall file a statement in the form prescribed by the department evidencing that he or she is maintaining a valid and effective bond or its equivalent under such act; or (ii) if he or she is not registered and bonded under the provisions of the federal Packers and Stockyards Act, he or she shall furnish in connection with his or her application for a license a fully executed duplicate of a valid and effective bond in the amount of five thousand dollars or such larger amount as may be specified by regulations promulgated by the department. (b) The bond shall contain the following conditions: (i) That the principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such principal for his or her own account or for the accounts of others and such principal shall safely keep and properly disburse all funds, if any, which come into his or her hands for the purpose of paying for livestock purchased for the accounts of others; (ii) that any person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond; and (iii) that at least thirty days' notice in writing shall be given to the department by the party terminating the bond; or

(3) Continue in the business of a dealer after his or her license or bond has expired, or has been suspended or revoked.

**Source:** Laws 1969, c. 447, § 4, p. 1494; Laws 1972, LB 1361, § 2; Laws 1983, LB 617, § 10; Laws 1997, LB 752, § 136; Laws 2016, LB909, § 8.

Effective date July 21, 2016.

## ARTICLE 19

### MEAT AND POULTRY INSPECTION

#### (a) NEBRASKA MEAT AND POULTRY INSPECTION LAW

Section

54-1904. License; application; inspection; renewal; fee; suspension; when.

#### (b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

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

#### (a) NEBRASKA MEAT AND POULTRY INSPECTION LAW

#### **54-1904 License; application; inspection; renewal; fee; suspension; when.**

It shall be unlawful for any person to operate or maintain any establishment unless first licensed by the department. A license may be obtained by applica-

tion to the director upon forms prescribed by him or her for that purpose. The license shall authorize and restrict the licensee to the operation or operations requested in his or her application and approved by the director.

Application for a livestock establishment or a poultry establishment license shall be accompanied by a fee of fifty dollars for each establishment. A license application for a rendering establishment or for a pet feed establishment shall be accompanied by a fee of three hundred dollars for each establishment. Such fee shall be deposited in the state treasury and deposited in the Livestock Auction Market Fund.

No license shall be issued until an inspection of the facilities described in the license application is completed showing the proposed facilities to be in conformity with the Nebraska Meat and Poultry Inspection Law and the rules and regulations adopted and promulgated thereunder by the director.

Licenses shall be renewable annually on or before their expiration. No license shall be transferable with respect to licensee or location. The renewal fee shall be the same as the application fee for each license.

Each license shall by order be summarily suspended whenever an inspection reveals that conditions in any establishment constitute a menace to the public health and shall remain suspended until such conditions are corrected, subject to review by the department and courts as is provided for in the Nebraska Meat and Poultry Inspection Law.

In addition, the director may, upon ten days' notice in writing, suspend or revoke any license issued hereunder or refuse to renew the same for violation of any of the provisions of the Nebraska Meat and Poultry Inspection Law or any rule or regulation duly adopted and promulgated by the director. The notice shall specify in writing the charges relied on, and the hearings, disposition, and court review shall be as prescribed by the Nebraska Meat and Poultry Inspection Law.

**Source:** Laws 1969, c. 449, § 4, p. 1507; Laws 1982, LB 928, § 43; Laws 1983, LB 617, § 11; Laws 1988, LB 352, § 98; Laws 1997, LB 752, § 137; Laws 2016, LB909, § 9.  
Effective date July 21, 2016.

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

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

**ARTICLE 23**

**DOMESTICATED CERVINE ANIMAL ACT**

Section

54-2306. Permit; application; fee; administrative fee; expiration of permit.

54-2320. Domesticated Cervine Animal Cash Fund; created; use; investment.

**54-2306 Permit; application; fee; administrative fee; expiration of permit.**

(1) On and after August 1, 1999, any person required to obtain a permit under section 54-2305 shall file an application with the department in the manner established by the department. Such application shall include:

(a) The name, residence, and place of business of the applicant;

(b) The exact description of the land upon which the domesticated cervine animal facility is to be located and the nature of the applicant's title to the land, whether in fee or under lease; and

(c) The kind and number of domesticated cervine animals authorized to be kept or reared in such facility.

(2) The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year. The annual fee for a domesticated cervine animal facility permit shall not be less than ten dollars nor more than two hundred dollars, as established by the department. Permittees not filing by October 1 shall be considered delinquent. The department may assess an administrative fee for delinquency, not to exceed one hundred dollars per month or a portion of a month, in addition to the permit fees. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees. Such permits shall expire on December 31 of the year of issuance.

**Source:** Laws 1999, LB 404, § 5; Laws 2016, LB909, § 10.  
Effective date July 21, 2016.

**54-2320 Domesticated Cervine Animal Cash Fund; created; use; investment.**

The department may assess and collect costs and fees for services provided, fees assessed, and expenses incurred pursuant to its responsibilities under the Domesticated Cervine Animal Act. All costs and fees assessed and collected pursuant to the act shall be remitted to the State Treasurer for credit to the Domesticated Cervine Animal Cash Fund, which fund is hereby created. The fund shall be utilized by the department for the purpose of carrying out 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 1999, LB 404, § 19; Laws 2016, LB909, § 11.  
Effective date July 21, 2016.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**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.

#### 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.

## ARTICLE 26

## COMPETITIVE LIVESTOCK MARKETS ACT

## Section

- 54-2601. Act, how cited.  
 54-2602. Terms, defined.  
 54-2603. Repealed. Laws 2016, LB176, § 7.  
 54-2604. Packers; acts prohibited.  
 54-2604.01. Swine production contract; contents; cancellation; procedure; violations; Attorney General; duties; fine; Department of Agriculture; rules and regulations.  
 54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; legislative findings; purpose of act; director; duties.

**54-2601 Act, how cited.**

Sections 54-2601 to 54-2631 shall be known and may be cited as the Competitive Livestock Markets Act.

**Source:** Laws 1999, LB 835, § 1; Laws 2006, LB 856, § 25; Laws 2016, LB176, § 1.

Effective date July 21, 2016.

**54-2602 Terms, defined.**

For purposes of the Competitive Livestock Markets Act:

(1) Animal unit means one head of cattle, three calves under four hundred fifty pounds, or five swine;

(2) Contract swine operation means a livestock operation in which swine owned or controlled by a packer are produced according to a written agreement that does not contain a confidentiality clause and that is agreed to by the packer and a person other than the packer who owns, leases, or holds a legal interest in the livestock operation;

(3) Department means the Department of Agriculture;

(4) Director means the Director of Agriculture or his or her designee;

(5) Livestock means live cattle or swine;

(6) Livestock operation means a location, including buildings, land, lots, yard corrals, and improvements, adapted to and utilized for the purpose of feeding, keeping, or otherwise providing for the care and maintenance of livestock;

(7) Packer means a person, or agent of such person, engaged in the business of slaughtering livestock in Nebraska in excess of one hundred fifty thousand animal units per year; and

(8) Person includes individuals, firms, associations, limited liability companies, and corporations and officers or limited liability company members thereof.

**Source:** Laws 1999, LB 835, § 2; Laws 2016, LB176, § 2.

Effective date July 21, 2016.

**54-2603 Repealed. Laws 2016, LB176, § 7.****54-2604 Packers; acts prohibited.**

(1) Except as provided in subsection (2) of this section, a packer shall not:



(a) Directly or indirectly own, control, or operate a livestock operation in this state; or

(b) Directly or indirectly be engaged in the ownership, keeping, or feeding of livestock, other than temporary ownership, keeping, and feeding not to exceed fourteen days which is necessary and incidental to, and immediately prior to, the process of slaughter.

(2) Subdivision (1)(b) of this section does not apply to the ownership, keeping, or feeding of swine by a packer at one or more contract swine operations in this state if the packer does not own, keep, or feed swine in this state except for the purpose of the slaughtering of swine or the manufacturing or preparation of carcasses of swine or goods originating from the carcasses in one or more processing facilities owned or controlled by the packer. Any agreement that establishes such a contract swine operation shall be subject to section 54-2604.01.

(3) For purposes of this section, indirectly own, control, or operate a livestock operation and indirectly be engaged in the ownership, keeping, or feeding of livestock includes:

(a) Receiving the net revenue or a share of the net revenue derived from a livestock operation or from a person who contracts for the care and feeding of livestock in this state, unless the packer is not involved in the management of the livestock operation;

(b) Assuming a morbidity or mortality production risk if the livestock are fed or otherwise maintained as part of a livestock operation in this state, unless the packer is not involved in the management of the livestock operation; and

(c) Loaning money for or guaranteeing, acting as a surety for, or otherwise financing a livestock operation in this state or a person who contracts for the care and feeding of livestock in this state. For purposes of this subdivision, loaning money for or guaranteeing, acting as a surety for, or otherwise financing a livestock operation does not include executing a contract for the purchase of livestock by a packer, including, but not limited to, forward contracts, marketing agreements, long-term arrangements, formula arrangements, other noncash sales arrangements, contracts that contain a ledger balance unsecured by collateral of the debtor or other price-risk-sharing arrangements, or providing an open account or loan unsecured by collateral of the debtor or a ledger balance or loan secured by collateral of the debtor so long as the amount due from the debtor does not exceed one million dollars.

**Source:** Laws 1999, LB 835, § 4; Laws 2016, LB176, § 3.  
Effective date July 21, 2016.

**54-2604.01 Swine production contract; contents; cancellation; procedure; violations; Attorney General; duties; fine; Department of Agriculture; rules and regulations.**

(1) For purposes of this section:

(a) Swine production contract means the agreement between a packer and a swine production contract grower which establishes a contract swine operation; and

(b) Swine production contract grower means the person who enters into a swine production contract with a packer to establish a contract swine operation.

(2) A swine production contract grower may cancel a swine production contract by mailing a cancellation notice to the packer not later than the later of:

(a) Three business days after the date on which the swine production contract is executed; or

(b) Any cancellation date specified in the swine production contract.

(3) A swine production contract shall clearly disclose:

(a) The right of the swine production contract grower to cancel the swine production contract;

(b) The method by which the swine production contract grower may cancel the swine production contract; and

(c) The deadline for canceling the swine production contract.

(4) A swine production contract shall contain on the first page a statement identified as the Additional Capital Investments Disclosure Statement, which shall conspicuously state that additional large capital investments may be required of the swine production contract grower during the term of the swine production contract. This subsection shall apply to any swine production contract entered into, amended, altered, modified, renewed, or extended after July 21, 2016.

(5) The forum for resolving any dispute among the parties to a swine production contract shall be a court of competent jurisdiction within the state in which the principal part of the performance takes place under the swine production contract.

(6) Any swine production contract that contains a provision requiring the use of arbitration to resolve any controversy that may arise under the contract shall contain a provision that allows a swine production contract grower, prior to entering the contract, to decline to be bound by the arbitration provision.

(7) Any swine production contract grower that declines a requirement of arbitration pursuant to subsection (6) of this section has the right to seek to resolve any controversy that may arise under the swine production contract using arbitration if, after the controversy arises, both parties consent in writing to use arbitration to settle the controversy.

(8) Subsections (6) and (7) of this section shall apply to any swine production contract entered into, amended, altered, modified, renewed, or extended after July 21, 2016.

(9) A swine production contract shall not contain any obligations of confidentiality, or any other provisions, that limit a swine production contract grower from sharing and reviewing the swine production contract with anyone, including, but not limited to, his or her business partners, employees, or agents, his or her financial and legal advisors, and his or her spouse and family members.

(10) Whenever the Attorney General has reason to believe that a packer is violating this section, he or she shall commence an action in district court to enjoin the violation. The court, upon determination that such packer is in violation of this section, shall assess the packer a fine of not less than one thousand dollars for each day of violation.

(11) The Department of Agriculture may adopt and promulgate such rules and regulations regarding swine production contracts as are needed to further

protect swine production contract growers from unfair business practices and coercion.

**Source:** Laws 2016, LB176, § 4.  
Effective date July 21, 2016.

**54-2627.01 Preemption by federal Livestock Mandatory Reporting Act of 1999; legislative findings; purpose of act; director; duties.**

(1) Sections 54-2607 to 54-2627 are preempted by the federal Livestock Mandatory Reporting Act of 1999, 7 U.S.C. 1635 to 1636h, when such federal act is in effect.

(2) The Legislature finds that the mandatory reporting of price and other terms in negotiated or contract procurement of livestock that has been in place under the federal Livestock Mandatory Reporting Act of 1999 is an important reform of livestock markets that contributes to greater market transparency, enhances the ability of livestock sellers to more competently and confidently market livestock, and lessens the existence of conditions under which market price manipulation and unfair preference or advantage in packer procurement practices can occur. It is a purpose of the Competitive Livestock Markets Act to provide for the continuation of mandatory price reporting for the benefit of Nebraska producers and protection of the integrity of livestock markets in Nebraska in the event of termination of the federal Livestock Mandatory Reporting Act of 1999 and its preemption of similar state price reporting laws as well as to provide for an orderly implementation of the state price reporting system authorized by the Competitive Livestock Markets Act, should Congress fail to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

(3)(a) If Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999 before December 1, 2006, the director shall, on December 1, 2006, or as soon before or after as practicable, prepare a budget and an appropriation request from the General Fund, from the Competitive Livestock Markets Cash Fund, or from other cash funds under the control of the director, for submission to the Legislature in an amount sufficient to enable the department to carry out its duties under sections 54-2607 to 54-2627, and such sections shall become applicable on October 1, 2007.

(b) If, on or after December 1, 2006, Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999, the director shall prepare such budget and appropriation request on or before a date that is twelve calendar months after the date such federal act expires or is terminated, and sections 54-2607 to 54-2627 shall become applicable on the first day of the calendar quarter that is eighteen months after the date such sections are not preempted by the federal act. No General Funds shall be appropriated for implementation of sections 54-2607 to 54-2627 after the date of commencement provided for in this section of reporting of price and other data regarding livestock transactions pursuant to sections 54-2613 and 54-2623. It is the intent of the Legislature that any General Funds appropriated for purposes of this section shall be reimbursed to the General Fund.

**Source:** Laws 2006, LB 856, § 27; Laws 2016, LB176, § 5.  
Effective date July 21, 2016.

## ARTICLE 28

## LIVESTOCK PRODUCTION

## Section

- 54-2801. Legislative findings; act, how cited.  
54-2802. Director of Agriculture; duties; designation of livestock friendly county; process; county board; powers.  
54-2803. Grant program; applications; purposes.  
54-2804. Livestock Growth Act Cash Fund; created; use; investment.  
54-2805. Rules and regulations.

**54-2801 Legislative findings; act, how cited.**

(1) Sections 54-2801 to 54-2805 shall be known and may be cited as the Livestock Growth Act.

(2) The Legislature finds that livestock production has traditionally served a significant role in the economic vitality of rural areas of the state and in the state's overall economy and that the growth and vitality of the state's livestock sector are critical to the continued prosperity of the state and its citizens. The Legislature further finds that a public interest exists in assisting efforts of the livestock industry and rural communities to preserve and enhance livestock development as an essential element of economic development and that a need exists to provide aid, resources, and assistance to rural communities and counties seeking opportunities in the growth of livestock production. It is the intent of the Legislature to seek reasonable means to nurture and support the livestock sector of this state.

**Source:** Laws 2003, LB 754, § 1; Laws 2015, LB175, § 1.

**54-2802 Director of Agriculture; duties; designation of livestock friendly county; process; county board; powers.**

(1) The Director of Agriculture shall establish a process, including criteria and standards, to recognize and assist efforts of counties to maintain or expand their livestock sector. A county that meets the criteria may apply to the director to be designated a livestock friendly county. A county may remove itself from the process at any time. Such criteria and standards may include, but are not limited to, the following factors: Consideration of the diversity of activities currently underway or being initiated by counties; a formal expression of interest by a county board, by a duly enacted resolution following a public hearing, in developing the livestock production and processing sectors of such county's economy; an assurance that such county intends to work with all other governmental jurisdictions within its boundaries in implementing livestock development within the county; flexible and individual treatment allowing each county to design its own development program according to its own timetable; and a commitment to compliance with the Livestock Waste Management Act.

(2) The designation of any county or counties as a livestock friendly county shall not be an indication nor shall it suggest that any county that does not seek or obtain such a designation is not friendly to livestock production.

(3) In order to assist any county with information and technology, the Department of Agriculture shall establish a resource data base to provide, upon written request of the county zoning authority or county board, information sources that may be useful to the county in evaluating and crafting livestock

facility conditional use permits that meet the objectives of the county and the livestock producer applicant.

(4) Nothing in this section shall prohibit or prevent any county board from adopting a resolution that designates the county a livestock friendly county.

**Source:** Laws 2003, LB 754, § 2; Laws 2015, LB175, § 2.

**Cross References**

Livestock Waste Management Act, see section 54-2416.

**54-2803 Grant program; applications; purposes.**

(1) From funds available in the Livestock Growth Act Cash Fund, the Director of Agriculture may administer a grant program to assist counties designated by the director as livestock friendly counties pursuant to section 54-2802 in livestock development planning and associated public infrastructure improvements. The director shall receive applications submitted by county boards or county planning authorities for assistance under this section and award grants for any of the following eligible purposes:

(a) Strategic planning to accommodate and encourage investment in livestock production, including one or more of the following activities:

(i) Reviewing zoning and land-use regulations;

(ii) Evaluating workforce availability, educational, institutional, public infrastructure, marketing, transportation, commercial service, natural resource, and agricultural assets, and needs of the county and surrounding areas to support livestock development;

(iii) Identifying livestock development goals and opportunities for the county;

(iv) Identifying and evaluating a location or locations suitable for placement of livestock production facilities; and

(v) Developing a marketing strategy to promote and attract investment in new or expanded livestock production and related livestock service and marketing businesses within the county; and

(b) Improvements to public infrastructure to accommodate one or more livestock development projects, including modifications to roads and bridges, drainage, and sewer and water systems. An application for a grant under this subdivision shall identify specific infrastructure improvements relating to a project for the establishment, expansion, or relocation of livestock production to which the grant funds would be applied and shall include a copy of the county conditional use permit issued for the livestock operation if required by county zoning regulations.

(2) A grant award under subdivision (1)(a) of this section shall not exceed fifteen thousand dollars. A grant award under subdivision (1)(b) of this section shall not exceed one-half of the unobligated balance of the Livestock Growth Act Cash Fund or two hundred thousand dollars, whichever is less.

**Source:** Laws 2015, LB175, § 3.

**54-2804 Livestock Growth Act Cash Fund; created; use; investment.**

The Livestock Growth Act Cash Fund is created. The fund may be used to carry out the Livestock Growth Act. The State Treasurer shall credit to the fund any funds transferred or appropriated to the fund by the Legislature and funds received as gifts or grants or other private or public funds obtained for the

purposes of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2015, LB175, § 4.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**54-2805 Rules and regulations.**

The Department of Agriculture may adopt and promulgate rules and regulations to carry out the Livestock Growth Act.

**Source:** Laws 2015, LB175, § 5.



## CHAPTER 55

### MILITIA

#### Article.

1. Military Code. 55-120 to 55-161.
4. Nebraska Code of Military Justice. 55-401 to 55-481.
6. Commission on Military and Veteran Affairs. 55-601 to 55-606.

#### ARTICLE 1

#### MILITARY CODE

#### Section

- 55-120. National Guard; Military Department; officers; personnel; rank.  
 55-125. Adjutant General; assistants; qualifications.  
 55-126. Adjutant General; assistants; duties; bond or insurance; salary.  
 55-157. Militia; active duty; personnel; compensation; travel expenses; health insurance reimbursement.  
 55-161. Military leave of absence; rights of officer or employee.

#### **55-120 National Guard; Military Department; officers; personnel; rank.**

The Military Department shall consist of the Adjutant General in the minimum grade of lieutenant colonel, one deputy adjutant general with a minimum grade of colonel, or a civilian deputy director, one assistant director for Nebraska Emergency Management Agency affairs, and such other officers and enlisted personnel in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized.

**Source:** Laws 1917, c. 205, § 3, p. 483; Laws 1919, c. 121, § 1, p. 288; C.S.1922, § 3304; Laws 1929, c. 189, § 19, p. 661; C.S.1929, § 55-124; R.S.1943, § 55-139; Laws 1953, c. 188, § 17, p. 598; Laws 1963, c. 321, § 2, p. 975; R.R.S.1943, § 55-139; Laws 1969, c. 459, § 18, p. 1587; Laws 1974, LB 983, § 3; Laws 1996, LB 43, § 10; Laws 2010, LB550, § 2; Laws 2014, LB806, § 1.

#### **55-125 Adjutant General; assistants; qualifications.**

(1) The Adjutant General shall appoint a deputy adjutant general or a civilian deputy director. An officer appointed as a deputy adjutant general shall hold the minimum grade of colonel as provided in section 55-120. No person shall be eligible for appointment and service as the deputy adjutant general unless he or she is an active member of the Nebraska National Guard. The deputy adjutant general shall have had at least four years of commissioned service in the Nebraska National Guard immediately prior to appointment and shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her appointment as deputy adjutant general.

(2) The chief of the National Guard Bureau shall appoint a United States property and fiscal officer. The officer shall hold the minimum grade of colonel. The Governor shall nominate one or more officers for the position of United States property and fiscal officer after consultation with the Adjutant General.

All nominees shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her nomination. The United States property and fiscal officer may appoint, with the approval of the Adjutant General, one or more assistant United States property and fiscal officers, each with the minimum grade of captain. The United States property and fiscal officer and each assistant United States property and fiscal officer shall be appointed from among the active officers of the Nebraska National Guard and shall have been commissioned officers in the Nebraska National Guard for a period of at least four years immediately prior to appointment.

(3) The Adjutant General shall appoint all additional officers, clerks, and caretakers as may be required.

**Source:** Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-143; Laws 1953, c. 188, § 20, p. 600; Laws 1963, c. 321, § 3, p. 976; R.R.S.1943, § 55-143; Laws 1969, c. 459, § 23, p. 1589; Laws 1974, LB 983, § 5; Laws 1976, LB 614, § 1; Laws 2004, LB 963, § 2; Laws 2010, LB550, § 4; Laws 2014, LB806, § 2.

#### **55-126 Adjutant General; assistants; duties; bond or insurance; salary.**

The deputy adjutant general or civilian deputy director shall aid the Adjutant General by the performance of such duties as may be assigned by the Adjutant General. In case of absence or inability of the Adjutant General, the deputy adjutant general or civilian deputy director shall perform all or such portion of the duties of the Adjutant General as the latter may expressly delegate to him or her. If the Adjutant General has appointed a civilian deputy director the Adjutant General may, in the event of the Adjutant General's absence, delegate the authority to perform the military duties of the Adjutant General to any active officer of the Nebraska National Guard who shall hold the minimum grade of colonel. In the case of absence of both the Adjutant General and the deputy adjutant general or civilian deputy director, the Adjutant General may delegate the authority to perform the military duties of the Adjutant General to any active officer of the Nebraska National Guard who shall hold the minimum grade of colonel and the Adjutant General may delegate the authority to perform state duties to any member of his or her appointed executive staff. The deputy adjutant general or civilian deputy director shall be bonded or insured as required by section 11-201. The deputy adjutant general or civilian deputy director shall receive such salary as the Adjutant General shall direct, payable biweekly. Such salary for the deputy adjutant general shall not exceed the annual pay and allowances of regular military officers of equal rank and time in service, except that when funds made available by the federal government are in excess of the amount payable as directed by the Adjutant General, the excess shall be used to reduce the amount required to be paid by the State of Nebraska. Except when called or ordered to active duty of the United States under 10 U.S.C. in support of missions authorized by the President of the United States or Secretary of Defense, the deputy adjutant general shall not be required to take either paid or unpaid leave, or a leave of absence or a reduction in salary, when performing his or her federal duties whether or not under federal orders.

**Source:** Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929,

§ 55-125; R.S.1943, § 55-144; Laws 1947, c. 196, § 2, p. 639; Laws 1951, c. 182, § 2, p. 685; Laws 1963, c. 321, § 4, p. 976; R.R.S.1943, § 55-144; Laws 1969, c. 459, § 24, p. 1589; Laws 1978, LB 653, § 16; Laws 1993, LB 170, § 1; Laws 2004, LB 884, § 28; Laws 2004, LB 963, § 3; Laws 2010, LB550, § 5; Laws 2014, LB806, § 3.

**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.

**55-161 Military leave of absence; rights of officer or employee.**

(1) The parts of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Chapter 43, listed in subdivisions (a) through (j) of this subsection or any other parts referred to by such parts, in

existence and effective as of January 1, 2001, are adopted as Nebraska law. This section shall be applicable to all persons employed in the State of Nebraska and shall include all officers and permanent employees, including teachers employed on a one-year contract basis and elected officials, of the state or of any of its agencies or political subdivisions. The Legislature hereby adopts:

- (a) Section 4301(a) — Purposes;
- (b) Section 4302 — Relation to other law and plans or agreements;
- (c) Section 4303(2),(4),(7) through (13),(15), and (16) and those portions of subparagraph (3) not relating to employment in a foreign country — Definitions;
- (d) Section 4304 — Character of service;
- (e) Section 4311 — Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited;
- (f) Section 4312 — Reemployment rights of persons who serve in the uniformed services;
- (g) Section 4313 with the exception of that portion of subparagraph (a) dealing with reemployment of federal employees — Reemployment positions;
- (h) Section 4316 — Rights, benefits, and obligations of persons absent from employment for service in a uniformed service;
- (i) Section 4317 — Health plans; and
- (j) Section 4318 — Employee pension benefit plans.

(2) This section applies to all members performing duty in active service of the state and to any person employed in Nebraska who is a member of the National Guard of another state and who is called into active service by the Governor of that state.

(3) The proper appointing authority or employer may make a temporary appointment to fill any vacancy created by the absence of an officer or employee pursuant to this section. Such officer or employee shall not be discharged from his or her former or new position without justifiable cause within one year after reinstatement.

(4) The Commissioner of Labor shall enforce this section.

(5) The Adjutant General shall perform duties assigned to the Secretary of Defense, Secretary of Veterans Affairs, or Secretary of Labor in the portions of 38 U.S.C. Chapter 43 adopted under this section.

**Source:** Laws 1951, c. 183, § 1, p. 686; Laws 1953, c. 189, § 1, p. 609; R.R.S.1943, § 55-156.02; Laws 1969, c. 459, § 59, p. 1600; Laws 1969, c. 751, § 8, p. 2828; Laws 1972, LB 1510, § 1; Laws 2002, LB 722, § 4; Laws 2016, LB753, § 1.  
Effective date July 21, 2016.

#### ARTICLE 4

#### NEBRASKA CODE OF MILITARY JUSTICE

##### Section

- 55-401. Code, how cited.
- 55-402. Terms, defined.
- 55-416. Commanding officer's nonjudicial punishment.
- 55-418. Court-martial; jurisdiction.
- 55-419. Court-martial; jurisdiction; not exclusive.

## Section

- 55-427. Statute of limitations.  
55-428. Witness; failure to appear; procedure.  
55-452. Attempt to commit an offense.  
55-480. Disorders and prejudice of good order and discipline.  
55-481. Summarized administrative discipline for minor offenses; procedure; appeal; notice; contents.

**55-401 Code, how cited.**

Sections 55-401 to 55-481 shall be known and may be cited as the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 1, p. 1553; Laws 2016, LB754, § 7.  
Effective date July 21, 2016.

**55-402 Terms, defined.**

As used in the Nebraska Code of Military Justice, unless the context otherwise requires:

(1) Military forces shall mean the National Guard, also called the Nebraska National Guard and also hereinafter referred to as the Army National Guard and Air National Guard, and in addition thereto, the militia when called into active service of this state;

(2) Officer shall mean a commissioned officer including a commissioned warrant officer;

(3) Superior officer shall mean an officer superior in rank or command;

(4) Enlisted person shall mean any person who is serving in an enlisted grade in any military force;

(5) Accuser shall mean a person who signs and swears to charges, to any person who directs that charges nominally be signed and sworn by another, and to any other person who has an interest other than an official interest in prosecution of the accused;

(6) Military judge shall mean an official of court-martial detailed in accordance with section 55-422; and

(7) Code shall mean the Nebraska Code of Military Justice.

**Source:** Laws 1969, c. 458, § 2, p. 1553; Laws 2016, LB754, § 8.  
Effective date July 21, 2016.

**55-416 Commanding officer's nonjudicial punishment.**

(1) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of the code to an accused who demands trial by court-martial, but punishment may not be imposed upon any member of the military forces under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the

following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days; or

(ii) If imposed by a general officer in command, arrest in quarters for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months; and

(b) Upon other personnel of his or her command:

(i) Correctional custody for not more than seven consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties, for not more than ten consecutive days;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days;

(vi) Detention of not more than fourteen days' pay; or

(vii) If imposed by an officer of the grade of major or above, correctional custody for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades; extra duties, including fatigue or other duties, for not more than fourteen consecutive days; restrictions to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period, but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, correctional custody is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which he or she is in charge such of the punishments authorized under



subsection (2)(b) of this section as the Governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or his or her successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, he or she may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He or she may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating:

(a) Arrest in quarters to restriction;

(b) Confinement on bread and water or diminished rations to correctional custody;

(c) Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(d) Extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers his or her punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

(a) Arrest in quarters for more than seven days;

(b) Correctional custody for more than seven days;

(c) Forfeiture of more than seven days' pay;

(d) Reduction of one or more pay grades from the fourth or a higher pay grade;

(e) Extra duties for more than ten days;

(f) Restriction for more than ten days; or

(g) Detention of more than fourteen days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown

shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(8) Any punishment authorized by this section which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean consecutive active service days.

**Source:** Laws 1969, c. 458, § 16, p. 1557; Laws 2016, LB754, § 9.  
Effective date July 21, 2016.

#### **55-418 Court-martial; jurisdiction.**

A court-martial as defined in the code shall have jurisdiction to try persons subject to the code for any offense defined and made punishable by the code and may, under such limitations and regulations as the Governor may prescribe, adjudge any of the following penalties:

- (1) Confinement at hard labor for not more than six months;
- (2) Hard labor without confinement for not more than three months;
- (3) Forfeitures or detentions of pay not exceeding two-thirds pay per month for six months;
- (4) Bad conduct discharge;
- (5) Dishonorable discharge;
- (6) Reprimand; or
- (7) Reduction of noncommissioned officers to the ranks, and to combine any two or more of such punishments in the sentence imposed.

**Source:** Laws 1969, c. 458, § 18, p. 1562; Laws 2016, LB754, § 11.  
Effective date July 21, 2016.

#### **55-419 Court-martial; jurisdiction; not exclusive.**

The jurisdiction of a court-martial is limited to the trial of persons accused of military offenses as described in the code. Persons subject to the code who are accused of offenses cognizable by the civil courts of this state or any other state where the military forces are present in that state may, upon accusation, be promptly surrendered to civil authorities for disposition, urgencies of the service considered. If the person subject to the code is accused of both a military offense under the code and a civil offense by the civil authorities, he or she shall be released to the civil authorities if the crime for which he or she is accused by the civil authorities carries a penalty in excess of the maximum penalty provided by the code.

**Source:** Laws 1969, c. 458, § 19, p. 1562; Laws 2016, LB754, § 12.  
Effective date July 21, 2016.

#### **55-427 Statute of limitations.**

A person charged with any offense is not liable to be tried by court-martial or punished under section 55-416 or 55-481 if the offense was committed more

than two years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction as set forth in the code.

**Source:** Laws 1969, c. 458, § 27, p. 1566; Laws 2016, LB754, § 13.  
Effective date July 21, 2016.

**55-428 Witness; failure to appear; procedure.**

(1) Any person not subject to the code who:

(a) Has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(b) Has been duly paid or tendered the fees of a witness at the rates allowed to witnesses attending the district courts of the State of Nebraska and mileage at the rate provided in section 81-1176 for state employees; and

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of a Class II misdemeanor.

(2) The Attorney General of Nebraska, upon the certification of the facts to him or her by the military court, commission, or board shall file an information against and prosecute any person violating this section.

(3) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

**Source:** Laws 1969, c. 458, § 28, p. 1566; Laws 1977, LB 39, § 55; Laws 1981, LB 204, § 97; Laws 2016, LB754, § 14.  
Effective date July 21, 2016.

**55-452 Attempt to commit an offense.**

(1) An act done with specific intent to commit an offense under the code, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

(2) Any person subject to the code who attempts to commit any offense punishable by the code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to the code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**Source:** Laws 1969, c. 458, § 52, p. 1574; Laws 2016, LB754, § 15.  
Effective date July 21, 2016.

**55-480 Disorders and prejudice of good order and discipline.**

Though not specifically mentioned in the Nebraska Code of Military Justice, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and all crimes and offenses of which persons subject to the code may be guilty, shall be taken cognizance of by a court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

**Source:** Laws 1969, c. 458, § 80, p. 1580; Laws 2015, LB268, § 31.

**Note:** Section 55-480 was amended by Laws 2015, LB 268, section 31. According to Article III, section 3, of the Constitution of Nebraska, the provisions of LB 268 have been suspended due to the certification by the Secretary of State of sufficient

signatures on referendum petitions to suspend the taking effect of such act until the same has been approved by the electors of the state. The question will be submitted to the voters at the November 2016 general election. The prior version of section 55-480 is found in the 2010 Reissue of Volume 3B of the Revised Statutes of Nebraska.

**55-481 Summarized administrative discipline for minor offenses; procedure; appeal; notice; contents.**

(1) Any commanding officer, with regard to enlisted members, and any general officer, with regard to officers, may issue summarized administrative discipline for minor offenses. A minor offense shall be any offense which, under the Uniform Code of Military Justice of the United States, 10 U.S.C. chapter 47, or other military or civilian law or military custom, has a maximum penalty of confinement for one year or less.

(2) In accordance with subsection (1) of this section, any commanding officer or general officer, after consultation with a duly appointed judge advocate in the Nebraska National Guard, may impose one or more of the following disciplinary actions for minor offenses without the intervention of a court-martial:

(a) Upon officers:

(i) Restriction to certain specified limits, with or without suspension from duty, for up to seven days; or

(ii) Forfeiture of pay for up to one day; and

(b) Upon enlisted personnel:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than seven consecutive days;

(ii) Forfeiture of pay for up to one day; or

(iii) Extra duty not to exceed ten days.

(3) Consecutive summarized administrative discipline for the same offense or incident is not authorized.

(4) The officer who imposes the summarized administrative discipline as provided in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted discipline imposed. In addition, the officer or successor in command may, at any time, remit or mitigate any part or amount of the unexecuted discipline imposed and may set aside in whole or in part the discipline, whether executed or unexecuted, and restore all rights, privileges, and property affected.

(5) A person disciplined under this section who considers his or her discipline unjust or disproportionate to the offense may, within twenty-four hours of the announcement of findings and through the proper channel, appeal to the next superior authority or general officer. The appeal and record of the hearing shall be promptly forwarded and decided, but the person disciplined may in the meantime be required to undergo the discipline adjudged. The superior authority or general officer may exercise the same powers with respect to the discipline imposed as may be exercised under subsection (4) of this section by the officer who imposed the discipline. No appeal may be taken beyond the Adjutant General, and if the Adjutant General proposed the discipline under this section, the person may request reconsideration by the Adjutant General. Only one appeal or request for reconsideration shall be permitted.

(6) The imposition and enforcement of summarized administrative discipline under this section for any act or omission is not a bar to trial by court-martial

for a serious crime or offense growing out of the same act or omission and not properly punishable under this section. The fact that summarized administrative discipline has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) Any summarized administrative discipline authorized by this section shall be executed within one year of the imposition of the discipline during any one or more periods of military duty.

(8) The enlisted member or officer shall be given twenty-four hours written notice of the intent to impose summarized administrative discipline under this section. Such notice shall include:

- (a) The offense committed;
- (b) A brief, written summary of the information upon which the allegations are based and notice that the enlisted member or officer may examine the statements and evidence;
- (c) The possible disciplinary actions;
- (d) An explanation that the rules of evidence do not apply at the hearing and that any testimony or evidence deemed relevant may be considered;
- (e) The date, time, and location of the hearing; and
- (f) The enlisted member's or officer's rights, which shall include:
  - (i) Twenty-four hour notice of the hearing and twenty-four hours to prepare for the hearing, which time shall run concurrently;
  - (ii) The right to appear personally before the officer proposing the summarized administrative discipline or the officer's delegate if the officer proposing the discipline is unavailable. The officer proposing such discipline must render findings based upon the record prepared by the delegate;
  - (iii) To be advised that he or she shall not be compelled to give evidence against himself or herself;
  - (iv) Notice as prescribed in this subsection;
  - (v) Examining the evidence presented or considered by the officer proposing the discipline;
  - (vi) Presenting matters in defense, extenuation, and mitigation orally, in writing, or both;
  - (vii) Presenting witnesses that are reasonably available. A witness is not reasonably available if his or her presence would unreasonably delay the hearing, there is a cost to the government, or military duty precludes a military member's participation in the opinion of such military member's commander;
  - (viii) Consultation prior to the hearing with a trial defense attorney appointed in the Nebraska National Guard, if he or she is reasonably available. A trial defense attorney is not reasonably available if his or her presence would unreasonably delay the hearing, there is a cost to the government to make him or her available, or other military duties or civilian employment precludes such trial defense attorney's participation, in the opinion of such trial defense attorney. Consultation with the trial defense attorney may be through personal contact, telephonic communication, or other electronic means available at no cost to the government;
  - (ix) To have an open hearing; and

(x) To waive in writing or at the hearing any or all of the enlisted member's or officer's rights.

(9) After considering the evidence, the officer proposing the discipline shall (a) announce the findings in writing with regard to each allegation, (b) inform the enlisted member or officer of the discipline imposed, if any, and (c) advise the enlisted member or officer of his or her right to appeal.

(10) The Adjutant General may adopt and promulgate regulations or policies to implement this section.

**Source:** Laws 2016, LB754, § 10.  
Effective date July 21, 2016.

## ARTICLE 6

### COMMISSION ON MILITARY AND VETERAN AFFAIRS

#### Section

55-601. Commission on Military and Veteran Affairs; created; members; terms; vacancy.

55-602. Commission on Military and Veteran Affairs; powers and duties.

55-603. Commission on Military and Veteran Affairs; officers; meetings; records.

55-604. Commission on Military and Veteran Affairs; expenses.

55-605. Military affairs liaison; duties.

55-606. Report; contents.

#### **55-601 Commission on Military and Veteran Affairs; created; members; terms; vacancy.**

(1) The Commission on Military and Veteran Affairs is created. The commission shall consist of the following voting members:

(a) The Director of Economic Development;

(b) The Adjutant General or his or her designee;

(c) The Director of Veterans' Affairs; and

(d) Three residents of the State of Nebraska, one from each congressional district. At least one of the three residents shall have current or prior military experience and at least one shall have a background in business.

(2) The commission shall have the following nonvoting, ex officio members:

(a) The chair of the State Committee of Employer Support of the Guard and Reserve;

(b) The commander of the 55th Wing of the Air Combat Command or his or her designee;

(c) The commander of the United States Strategic Command or his or her designee; and

(d) The commander of the 557th Weather Wing of the United States Air Force or his or her designee.

(3) The members of the commission described in subdivision (1)(d) of this section shall be appointed by the Governor. The Governor shall designate the initial terms of the members described in subdivision (1)(d) of this section so that one member serves for a term of two years, one member serves for a term of three years, and one member serves for a term of four years. Succeeding appointments shall be for terms of four years and shall be made in the same manner as the original appointments. The terms of the members shall begin on October 1 of the year in which they are appointed unless appointed to fill a



vacancy. Appointments to fill a vacancy, occurring other than by the expiration of a term of office, shall be made for the unexpired term of the member whose office is vacated.

**Source:** Laws 2016, LB754, § 1.  
Effective date July 21, 2016.

**55-602 Commission on Military and Veteran Affairs; powers and duties.**

The Commission on Military and Veteran Affairs shall have the authority to receive and administer funds from state, federal, and other sources. Additionally, the commission shall:

- (1) Address matters of military significance to Nebraska;
- (2) Maintain a cooperative and constructive relationship between state agencies and the military and veteran entities in Nebraska as necessary to ensure coordination and implementation of unified and comprehensive statewide strategies involved with, or affected by, the military;
- (3) Focus on and, when designated, serve as lead agency on:
  - (a) Defense economic adjustment and transition information and activities;
  - (b) Exploring operating costs, missions, and strategic value of federal military installations located in the state;
  - (c) Employment issues for communities that depend on defense bases and defense-related businesses; and
  - (d) Assistance provided to communities that have experienced a defense-related closure or realignment;
- (4) Advise the Governor, the Legislature, and other appropriate governmental officials on all matters in which the military services and the state have mutual interests, needs, and concerns;
- (5) Promote and optimize state and United States Department of Defense initiatives that will improve the military value of the Nebraska National Guard, active and reserve military force structure and installations, and the quality of life for military personnel residing in Nebraska;
- (6) Partner with local communities to conduct ongoing analyses of current and proposed changes to the mission, military force structure, and alignment of the United States Department of Defense;
- (7) Recommend state, federal, and local economic development projects to promote, foster, and support economic progress through a military presence in Nebraska;
- (8) Assist the private sector in developing derivative investments, employment, and educational opportunities associated with high technology programs and activities at Nebraska's military installations;
- (9) Partner with local communities to develop methods to improve private and public employment opportunities for former members of the military and their families residing in this state; and
- (10) Identify and support ways to provide sound infrastructure, adequate housing, education, and transition support into Nebraska's workforce for military members and their families, retired military personnel, and veterans.

**Source:** Laws 2016, LB754, § 2.  
Effective date July 21, 2016.

**55-603 Commission on Military and Veteran Affairs; officers; meetings; records.**

The Commission on Military and Veteran Affairs shall elect a chairperson, vice-chairperson, and secretary from among its members.

The commission shall meet two times each year at such times and places as shall be determined by the chairperson and shall keep a record of its proceedings. The chairperson may call special meetings at any time he or she deems necessary. The secretary shall mail written notice of the time and place of all meetings in advance to each voting and nonvoting, ex officio member of the commission. The secretary shall also provide notice of all meetings as provided under section 84-1411.

**Source:** Laws 2016, LB754, § 3.  
Effective date July 21, 2016.

**55-604 Commission on Military and Veteran Affairs; expenses.**

(1) Members of the Commission on Military and Veteran Affairs shall receive no compensation for their services as members of the commission other than their salary, but shall be reimbursed for actual and necessary expenses.

(2) Reimbursement for expenses shall be as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2016, LB754, § 4.  
Effective date July 21, 2016.

**55-605 Military affairs liaison; duties.**

(1) The Department of Veterans' Affairs shall hire a military affairs liaison for the Commission on Military and Veteran Affairs and fix his or her salary. The department shall provide administrative support to the commission as needed. The liaison shall have military experience and serve at the pleasure of the commission. The liaison shall not be subject to Chapter 81, article 13.

(2) The liaison shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned by the commission.

(3) The commission may obtain the services of experts and consultants as necessary to carry out its duties.

**Source:** Laws 2016, LB754, § 5.  
Effective date July 21, 2016.

**55-606 Report; contents.**

The Commission on Military and Veteran Affairs shall prepare an annual report summarizing the military assets of Nebraska, including installations and missions, and the economic impact of the military assets in Nebraska. The report shall also include recommendations for preserving and sustaining military assets and missions existing in Nebraska and recommendations for actions which the state can take to encourage expanding such assets and missions. The commission shall submit the report electronically to the Legislature, the Gover-

nor, and the commanding officer of every military base in Nebraska on or before November 15 of each year.

**Source:** Laws 2016, LB754, § 6.  
Effective date July 21, 2016.



## CHAPTER 57

### MINERALS, OIL, AND GAS

#### Article.

- 7. Oil and Gas Severance Tax. 57-706.
- 9. Oil and Gas Conservation. 57-901 to 57-922.
- 11. Eminent Domain for Pipelines. 57-1101.
- 12. Uranium Severance Tax. 57-1206.
- 14. Major Oil Pipeline Siting Act. 57-1401 to 57-1413.
- 15. Oil Pipeline Projects. 57-1501 to 57-1503.

#### ARTICLE 7

#### OIL AND GAS SEVERANCE TAX

#### Section

57-706. Tax; security; notice; use.

#### **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.

#### ARTICLE 9

#### OIL AND GAS CONSERVATION

#### Section

- 57-901. Development of oil and natural gas; purpose.
- 57-903. Oil and gas; terms, defined.
- 57-905. Commission; powers and duties.
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- 57-919. Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.
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- 57-922. Oil and Gas Conservation Trust Fund; receipts; disbursements; investment.

**57-901 Development of oil and natural gas; purpose.**

The purpose of sections 57-901 to 57-923 is to permit the development of Nebraska's oil and natural gas resources up to the maximum efficient rate of production while promoting the health, safety, and environment of the residents of Nebraska. It is the public policy of the state and in the public interest to encourage responsible development, production, and utilization of oil and gas natural resources and their products, to prevent waste, to protect the correlative rights of all owners, to encourage and authorize cycling, recycling, pressure maintenance, and secondary recovery operations to obtain the most efficient recovery of oil and gas resources for the highest benefit of landowners, royalty owners, producers, and the general public, and to facilitate open communication with and the participation of the general public and affected local governmental entities.

**Source:** Laws 1959, c. 262, § 1, p. 900; Laws 2016, LB1082, § 1.  
Effective date July 21, 2016.

**57-903 Oil and gas; terms, defined.**

As used in sections 57-901 to 57-921, unless the context otherwise requires:

(1)(a) Waste, as applied to oil, shall include underground waste, inefficient, excessive, or improper use, or dissipation of reservoir energy, including gas energy and water drive, surface waste, open pit storage, and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open pit storage, reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use, and sale; (b) waste, as applied to gas shall include (i) the escape, blowing, or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas from wells producing oil or both oil and gas and (ii) the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced, but excluding gas that is reasonably necessary in the drilling, completing, testing, and producing of wells and gas unavoidably produced with oil if it is not economically feasible for the producer to save or use such gas; and (c) waste shall also mean the abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas therefrom causing reasonably avoidable drainage between tracts of land or resulting in one or more owners in such pool producing more than his or her just and equitable share of the oil or gas from such pool;

(2) Commission shall mean the Nebraska Oil and Gas Conservation Commission;

(3) Person shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and any department, agency, or instrumentality of the state or of any governmental subdivision thereof;

(4) Oil shall mean crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from



gas other than gas produced in association with oil and commonly known as casing-head gas;

(5) Gas shall mean all natural gas and all other fluid hydrocarbons not defined as oil;

(6) Pool shall mean an underground reservoir containing a common accumulation of oil or gas or both, each zone of the structure which is completely separated from any other zone in the same structure is a pool as that term is used in sections 57-901 to 57-921;

(7) Field shall mean the general area underlaid by one or more pools;

(8) Owner shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he or she produces therefrom either for himself or herself or for himself or herself and others;

(9) Producer shall mean the owner of a well or wells capable of producing oil or gas or both or any person who owns and operates a lease, or a unit of producing leases in which other persons own interests, with respect to such well or wells;

(10) Correlative rights shall mean the opportunity afforded to the owner of each property in a pool to produce, so far as it is reasonably practicable to do so without waste, his or her just and equitable share of the oil or gas, or both, in the pool; and

(11) The word and shall include the word or, and the word or shall include the word and.

**Source:** Laws 1959, c. 262, § 3, p. 901; Laws 1983, LB 228, § 5; Laws 1983, LB 224, § 7; Laws 1993, LB 121, § 353; Laws 2016, LB1082, § 2.

Effective Date July 21, 2016.

#### **57-905 Commission; powers and duties.**

(1) The commission shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of sections 57-901 to 57-921.

(2) The commission shall have authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission.

(3) The commission shall have authority to require: (a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the production of oil and gas; (b) the making and filing of directional surveys, and reports on well location, drilling, and production within six months after the completion or abandonment of the well; (c) the drilling, casing, operating, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blowouts, cave-ins, seepages, and fires; (d) the furnishing of a reasonable bond with good and sufficient surety, conditioned for the performance of the duty to comply with all the provisions of the laws of the State of Nebraska and the rules, regulations, and orders of the commission; (e) that the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured; (f) the operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios; (g) metering or

other measuring of oil, gas, or product in pipelines or gathering systems; (h) that every person who produces or purchases oil or gas in this state shall keep and maintain or cause to be kept and maintained for a five-year period complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may reasonably prescribe with respect to such oil or gas or the products thereof; (i) that upon written request of any person, geologic information, well logs, drilling samples, and other proprietary information filed with the commission in compliance with sections 57-901 to 57-921, or any rule, regulation, or order of the commission, may be held confidential for a period of not more than twelve months; (j) periodic sampling and reporting of injection fluids injected into Class II commercial underground injection wells; (k) monitoring of produced water transporters; and (l) periodic evaluation of financial assurance requirements on existing and proposed wells to ensure ability to pay the costs of plugging, abandonment, and surface restoration.

(4) The commission is authorized to conduct public informational meetings and forums for public interaction on Class II commercial underground injection well permit applications under the jurisdiction of the commission.

(5) The commission shall have authority in order to prevent waste, to regulate: (a) The drilling, producing and plugging of wells, or test holes, and all other operations for the production of oil or gas; (b) the shooting and chemical treatment of wells; (c) the spacing of wells; (d) operations to increase ultimate recovery such as, but without limitation, the cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and (e) disposal of oilfield wastes, including salt water.

(6) The commission shall not have authority to limit the production of oil or gas, or both, from any pool or field except to prevent waste therein.

(7) The commission shall have authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of the provisions of sections 57-901 to 57-921.

(8) The commission shall have authority to promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of sections 57-901 to 57-921.

(9) The commission, with the approval of the Governor, shall have authority to establish and maintain its principal office and its books, papers, and records at such place in the state as it shall determine. The commission shall not have authority to purchase its principal office quarters.

(10) The commission shall have authority to require that all wells drilled for oil and gas shall be adequately logged with mechanical-electrical logging devices, and to require the filing of logs.

(11) The commission shall have the authority to regulate the drilling and plugging of seismic and stratigraphic tests in oil and gas exploration holes.

(12) The commission shall have the authority to act as the state jurisdictional agency pursuant to the federal Natural Gas Policy Act of 1978, Public Law 95-621, 92 Stat. 3350.

(13) The commission shall have the authority to have one or more examiners, who are employees of the commission, conduct any of its hearings, investigations, and examinations authorized by sections 57-901 to 57-921. Such examin-

er may exercise the commission's powers including, but not limited to, the taking of evidence and testimony under oath, resolving questions of fact and questions of law, and the entering of an order. Such order shall be entered in the commission's order journal. Any person having an interest in property affected by an order issued by an examiner and who is dissatisfied with such order may appeal to the commission by filing a petition on appeal to the commission within fifteen days of the entering of the examiner's order. Such person shall provide notice to all interested persons by personal service or registered or certified United States mail with return receipt, requiring such parties to answer within fifteen days from the date of service. Upon appeal, the commission shall hear the case de novo on the record and shall not be bound by any conclusions of the examiner. The commission shall hold a hearing on the appeal within forty-five days of the filing of an appeal to the commission and issue its order within fifteen days after the hearing. The commission shall review all orders issued by an examiner that are not appealed and issue an order concerning the examiner's order within sixty days after the examiner's order. The commission shall adopt, amend, or reject the examiner's order. Any order of an examiner which is not appealed to the commission and which the commission adopts shall not be appealable to the district court unless the commission adopts an order before the end of the time for appeal to the commission.

(14) The commission shall require, upon receipt of a Class II commercial underground injection well permit application, that notice be provided to the county, city, or village and natural resources district within which the proposed well would be located and shall provide such county, city, or village and natural resources district with copies of all permit application materials.

**Source:** Laws 1959, c. 262, § 5, p. 903; Laws 1961, c. 277, § 1, p. 811; Laws 1961, c. 278, § 1, p. 813; Laws 1967, c. 352, § 1, p. 936; Laws 1971, LB 355, § 1; Laws 1978, LB 661, § 2; Laws 1979, LB 56, § 1; Laws 1980, LB 709, § 2; Laws 1983, LB 356, § 1; Laws 2016, LB1082, § 3.

Effective date July 21, 2016.

#### **57-905.01 Operator of Class II commercial underground injection well; duties.**

An operator of a Class II commercial underground injection well shall sample and analyze the fluids injected into each disposal well at sufficiently frequent time intervals to yield data representative of fluid characteristics, but no less frequently than once annually. The operator shall submit a copy of the fluid analysis to the commission.

**Source:** Laws 2016, LB1082, § 4.

Effective date July 21, 2016.

#### **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.

**57-911 Commission; rules and regulations; filing fee.**

(1) The commission shall prescribe rules and regulations governing the practice and procedure before the commission.

(2) No rule, regulation, or order, or amendment thereof, except in an emergency, shall be made by the commission without a public hearing upon at least fifteen days' notice. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without notice or hearing which shall be effective upon promulgation. No emergency order shall remain effective for more than twenty days.

(4) Any notice required by the provisions of sections 57-901 to 57-921, except in proceedings involving a direct complaint by the commission, shall be given at the election of the commission either by personal service, registered or certified mail, or one publication in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall be issued in the name of the state, shall be signed by a member of the commission or its secretary, and shall specify the style and number of the proceedings, the time and place of the hearing, and the purpose of the proceeding. Should the commission notice be by personal service, such service may be made by any officer authorized to serve summons, or by any agent of the commission, in the same manner and extent as is provided by law for the service of summons in civil actions in the district courts of this state. Proof of the service by such agent shall be by his or her affidavit and proof of service by an officer shall be in the form required by law with respect to service of process in civil actions. In all cases where a complaint is made by the commission or the Director of the Nebraska Oil and Gas Conservation Commission that any part of any provision of sections 57-901 to 57-921, or any rule, regulation, or order of the commission is being violated, notice of the hearing to be held on such complaint shall be served on the interested parties in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state. In addition to notices required by this section, the commission may provide for further notice of hearing in such proceedings as it may deem necessary in order to notify all interested persons of the pendency of such proceedings and the time and place of hearing and to afford such persons an opportunity to appear and be heard.

(5) All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full and indexed in books to be kept by the commission for that purpose, shall be public records open for inspection at all times during reasonable office hours, and shall be filed as provided by the

Administrative Procedure Act. A copy of any rule, regulation, or order certified by any member of the commission, or its secretary, under its seal, shall be received in evidence in all courts of this state with the same effect as the original.

(6) The commission may act upon its own motion or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within thirty days after the hearing.

(7) A petition filed with the commission for a public hearing shall be accompanied by a filing fee of two hundred fifty dollars.

**Source:** Laws 1959, c. 262, § 11, p. 908; Laws 1961, c. 279, § 1, p. 816; Laws 1967, c. 354, § 2, p. 939; Laws 1967, c. 356, § 1, p. 944; Laws 1995, LB 407, § 2; Laws 2016, LB1082, § 5.  
Effective date July 21, 2016.

**Cross References**

Administrative Procedure Act, see section 84-920.

**57-913 Appeal; procedure.**

Any person having an interest in property affected by and who is dissatisfied with any rule, regulation, or order made or issued under sections 57-901 to 57-921 may appeal the rule, regulation, or order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1959, c. 262, § 13, p. 911; Laws 1961, c. 280, § 1, p. 818; Laws 1967, c. 357, § 1, p. 946; Laws 1988, LB 352, § 101; Laws 2016, LB1082, § 6.  
Effective date July 21, 2016.

**Cross References**

Administrative Procedure Act, see section 84-920.

**57-914 Temporary restraining order; bond; limitation of actions.**

(1) No temporary restraining order or injunction of any kind against the commission or its agents, employees or representatives, or the Attorney General, shall become operative unless and until the plaintiff party shall execute and file with the clerk of the district court a bond in such amount and upon such conditions as the court issuing such order or injunction may direct, with surety approved by the clerk of the district court thereof. The bond shall be made payable to the State of Nebraska, and shall be for the use and benefit of all persons who may be and to the extent that they shall suffer injury or damage by any acts done under the protection of the restraining order or injunction, if the same should not have issued. No suit on the bond may be brought after six months from the date of the final determination of the suit in which the restraining order or injunction was issued.

(2) Any suit, action, or other proceedings based upon a violation of any of the provisions of sections 57-901 to 57-921 shall be commenced within one year from the date of the violation complained of.

**Source:** Laws 1959, c. 262, § 14, p. 912; Laws 2016, LB1082, § 7.  
Effective date July 21, 2016.



**57-915 Violations; penalty.**

(1) Any person who violates any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission shall be guilty of a Class II misdemeanor. Each day that such violation continues shall constitute a separate offense.

(2) If any person, for the purpose of evading the provisions of sections 57-901 to 57-921, or any rule, regulation or order of the commission, shall make or cause to be made any false entry or statement in a report required by the provisions of sections 57-901 to 57-921, or by any such rule, regulation or order, or shall make or cause to be made any false entry in any record, account or memorandum required by the provisions of sections 57-901 to 57-921, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, such person shall be guilty of a Class II misdemeanor.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission shall be subject to the same penalty as that prescribed by the provisions of sections 57-901 to 57-921 for the violation by such other person.

(4) The penalties provided in this section shall be recoverable by suit filed by the Attorney General in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of any such penalty shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

**Source:** Laws 1959, c. 262, § 15, p. 913; Laws 1977, LB 39, § 59; Laws 2016, LB1082, § 8.

Effective date July 21, 2016.

**57-916 Violations; injunction; parties; process.**

(1) Whenever it appears that any person is violating or threatening to violate any provision of sections 57-901 to 57-921, or any rule, regulation or order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. Upon the filing of any such suit, summons issued to such person may be directed to the sheriff of any county in this state for service by such sheriff or his deputies. In any such suit, the court shall have jurisdiction and authority to issue, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant.

(2) If the commission shall fail to bring suit to enjoin a violation or threatened violation of any provision of sections 57-901 to 57-921, or any rule, regulation, or order of the commission, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the commission might have brought suit. The commission shall be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of sections 57-901 to 57-921, or a rule, regulation or order of the commission, and the action shall proceed and injunctive relief may be

granted in the same manner as if suit had been brought by the commission; Provided, that in such event the person bringing suit shall be required to give bond in accordance with the rules of civil procedure in the district courts.

**Source:** Laws 1959, c. 262, § 16, p. 914; Laws 2016, LB1082, § 9.  
Effective date July 21, 2016.

**57-916.01 Violations; civil penalty; procedure.**

(1) In addition to the penalties prescribed in section 57-915, any person who violates any provision of sections 57-901 to 57-921, any rule, regulation, or order of the commission, or any term, condition, or limitation of any permit issued pursuant to such sections, rule, regulation, or order may be subject to a civil penalty imposed by the commission of not to exceed one thousand dollars. No civil penalty shall be imposed until written notice is sent pursuant to subsection (2) of this section and a period of ten days has elapsed in which the person may come into compliance if possible. If any violation is a continuing one, each day a violation continues after such ten-day period shall constitute a separate violation for the purpose of computing the applicable civil penalty. The commission may compromise, mitigate, or remit such penalties.

(2) Whenever the commission intends to impose a civil penalty under this section, the commission shall notify the person in writing (a) setting forth the date, facts, and nature of each violation with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or permit involved in the violation, and (c) specifying the amount of each penalty which the commission intends to impose. Such written notice shall be sent by registered or certified mail to the last-known address of such person. The notice shall also advise such person of his or her right to a hearing and that failure to pay any civil penalty subsequently imposed by the commission will result in a civil action by the commission to collect such penalty. The person so notified may, within thirty days of receipt of such notice, submit a written request for a hearing to review any penalty to be imposed by the commission. A hearing shall be held in accordance with the Administrative Procedure Act, and any person upon whom a civil penalty is subsequently imposed may appeal such penalty pursuant to such act. On the request of the commission, the Attorney General or county attorney may institute a civil action to collect a penalty imposed pursuant to this section.

**Source:** Laws 1990, LB 922, § 1; Laws 2016, LB1082, § 10.  
Effective date July 21, 2016.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**57-917 Commission; director; appointment; compensation; bond or insurance.**

To enable the commission to carry out its duties and powers under the laws of this state with respect to conservation of oil and gas and to enforce sections 57-901 to 57-921 and the rules and regulations so prescribed, the commission shall employ one chief administrator who shall not be a member of the commission and who shall be known as the Director of the Nebraska Oil and Gas Conservation Commission, and as such he or she shall be charged with the duty of administering and enforcing the provisions of sections 57-901 to 57-921 and all rules, regulations, and orders promulgated by the commission, subject

to the direction of the commission. The director shall be a qualified petroleum engineer with not less than three years' actual field experience in the drilling and operation of oil and gas wells. Such director shall hold office at the pleasure of the commission and receive a salary to be fixed by the commission. The director, with the concurrence of the commission, shall have the authority, and it shall be his or her duty, to employ assistants and other employees necessary to carry out the provisions of sections 57-901 to 57-921. The director shall be ex officio secretary of the Nebraska Oil and Gas Conservation Commission and shall keep all minutes and records of the commission. The director shall, as secretary, be bonded or insured as required by section 11-201. The premium shall be paid by the State of Nebraska. The director and other employees of the commission performing duties authorized by sections 57-901 to 57-921 shall be paid their necessary traveling and living expenses when traveling on official business at such rates and within such limits as may be fixed by the commission, subject to existing laws.

**Source:** Laws 1959, c. 262, § 17, p. 914; Laws 1978, LB 653, § 19; Laws 2004, LB 884, § 31; Laws 2016, LB1082, § 11.  
Effective date July 21, 2016.

**57-918 Attorney General; act as legal advisor; administration of oath.**

The Attorney General shall be the attorney for the Nebraska Oil and Gas Conservation Commission; Provided, that in cases of emergency or in other special cases the commission may, with the consent of the Attorney General retain additional legal counsel, and for such purpose may use any funds available under the provisions of sections 57-901 to 57-921. Any member of the commission, or the secretary thereof, shall have the power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by sections 57-901 to 57-921 or by any other law of this state relating to the conservation of oil and gas.

**Source:** Laws 1959, c. 262, § 18, p. 915; Laws 2016, LB1082, § 12.  
Effective date July 21, 2016.

**57-919 Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.**

(1) All money collected by the Tax Commissioner or the commission or as civil penalties under sections 57-901 to 57-921 shall be remitted to the State Treasurer for credit to a special fund to be known as the Oil and Gas Conservation Fund. Expenses incident to the administration of such sections shall be paid out of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Oil and Gas Conservation 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) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved, and sold or transported from the premises in Nebraska where produced a charge not to exceed fifteen mills on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as in its judgment the expenses chargeable against the Oil and Gas Conservation Fund may require, except that the amounts fixed by the commission shall not exceed

the limit prescribed in this section. It shall be the duty of the Tax Commissioner to make collection of such assessments. The persons owning an interest, a working interest, a royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, subject to the charge provided for in this section shall be liable to the producer for such charge in proportion to their ownership at the time of production. The producer shall, on or before the last day of the month next succeeding the month in which the charge was assessed, file a report or return in such form as prescribed by the commission and Tax Commissioner together with all charges due. In the event of a sale of oil or gas within this state, the first purchaser shall file this report or return together with any charges then due. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports or returns shall be considered filed on time if postmarked before midnight of the final filing date. Any such charge not paid within the time herein specified shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date of delinquency until paid, and such charge together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the charge for each month or part of the month that the charge has remained delinquent, but in no event shall the penalty be more than twenty-five percent of the charge. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest. The person remitting the charge as provided in this section is hereby authorized, empowered, and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production the proportionate amount of such charge before making payment to such persons. This subsection shall apply to all lands in the State of Nebraska, anything in section 57-920 to the contrary notwithstanding, except that there shall be exempted from the charge levied and assessed in this section the following: (a) The interest of the United States of America and the interest of the State of Nebraska and the political subdivisions thereof in any oil or gas or in the proceeds thereof; (b) the interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof produced from land subject to the supervision of the United States; and (c) oil and gas used in producing operations or for repressuring or recycling purposes. All money so collected shall be remitted to the State Treasurer for credit to the Oil and Gas Conservation Fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of sections 57-901 to 57-921.

**Source:** Laws 1959, c. 262, § 19, p. 915; Laws 1969, c. 584, § 56, p. 2380; Laws 1973, LB 527, § 1; Laws 1974, LB 804, § 2; Laws 1980, LB 709, § 3; Laws 1981, LB 167, § 33; Laws 1983, LB 224, § 8; Laws 1986, LB 1027, § 198; Laws 1992, Fourth Spec. Sess., LB 1, § 8; Laws 1994, LB 1066, § 44; Laws 1995, LB 407, § 3; Laws 1997, LB 97, § 1; Laws 2009, First Spec. Sess., LB3, § 33; Laws 2016, LB1082, § 13.  
Effective date July 21, 2016.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**57-920 Sections; jurisdiction.**

The State of Nebraska being a sovereign state and not disposed to jeopardize or surrender any of its sovereign rights, sections 57-901 to 57-921 shall apply to all lands in the State of Nebraska lawfully subject to its police powers, except it shall apply to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands shall fail to effect the intent and purposes of sections 57-901 to 57-921 and otherwise shall apply to such lands to such extent as an officer of the United States having jurisdiction, or his or her duly authorized representative, shall approve any of the provisions of sections 57-901 to 57-921 or the order or orders of the commission which affects such lands, and the same shall apply to any lands committed to a unit agreement approved by the Secretary of the Interior of the United States, or his or her duly authorized representative, except that the commission may, under such unit agreements, suspend the application of the provisions of sections 57-901 to 57-921 or any part of sections 57-901 to 57-921 so long as the conservation of oil and gas and the prevention of waste, as provided in sections 57-901 to 57-921, is accomplished thereby but such suspension shall not relieve any operator from making such reports as are necessary or advised to be fully informed as to operations under such agreement and as the commission may require under the provisions of sections 57-901 to 57-921.

**Source:** Laws 1959, c. 262, § 20, p. 917; Laws 2016, LB1082, § 14.  
Effective date July 21, 2016.

**57-921 Commission; price or value of oil, gas, or other hydrocarbon substances; no power to fix.**

Notwithstanding anything heretofore contained in sections 57-901 to 57-921, the Nebraska Oil and Gas Conservation Commission shall have no authority to establish, fix or in any way control the price or value of oil, gas, other hydrocarbon substances or any of the products or component parts thereof.

**Source:** Laws 1959, c. 262, § 21, p. 917; Laws 2016, LB1082, § 15.  
Effective date July 21, 2016.

**57-922 Oil and Gas Conservation Trust Fund; receipts; disbursements; investment.**

There is hereby created in the state treasury a special fund to be known as the Oil and Gas Conservation Trust Fund. All sums of money received by the Nebraska Oil and Gas Conservation Commission, in a manner other than as provided in sections 57-901 to 57-921, shall be paid into the state treasury and the State Treasurer shall deposit the money in the Oil and Gas Conservation Trust Fund. The State Treasurer shall disburse the money in the trust fund as directed by resolution of the Nebraska Oil and Gas Conservation Commission. All disbursements for the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1973, LB 119, § 1; Laws 2016, LB1082, § 16.  
Effective date July 21, 2016.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## 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.

## 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.

## ARTICLE 14

### MAJOR OIL PIPELINE SITING ACT

#### Section

- 57-1401. Act, how cited.
- 57-1402. Purposes of act.
- 57-1403. Legislative findings.
- 57-1404. Terms, defined.
- 57-1405. Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.
- 57-1406. Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.
- 57-1407. Commission; duties; public meetings; agency reports; approval by commission; considerations.
- 57-1408. Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.
- 57-1409. Appeal.
- 57-1410. Rules and regulations.
- 57-1411. Public Service Commission Pipeline Regulation Fund; created; use; investment.
- 57-1412. Commission; powers.
- 57-1413. Documents or records; not withheld from public.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.

**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 commis-

sion 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.

**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.

**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.

**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 section 75-136.

**Source:** Laws 2011, First Spec. Sess., LB1, § 10; Laws 2013, LB545, § 1.

**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.

**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.

**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.

**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.

**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 reasonable 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.

**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.

**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.

#### 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. 58-242 to 58-270.
3. Small Business Development. Repealed.
4. Research and Development Authority. Repealed.
7. Nebraska Affordable Housing Act. 58-702 to 58-711.
8. Nebraska Educational, Health, and Social Services Finance Authority Act. 58-801 to 58-866.

#### ARTICLE 2

#### NEBRASKA INVESTMENT FINANCE AUTHORITY

#### Section

- 58-242. Authority; agricultural projects; duties.
- 58-246. Agricultural projects; loan reports; public information; borrower's name omitted.
- 58-270. Authority; reports; contents; audit; issuance of bonds; notices.

#### **58-242 Authority; agricultural projects; duties.**

Prior to exercising any of the powers authorized by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall require:

(1) That no loan will be made to any person with a net worth of more than five hundred thousand dollars;

(2) That the lender certify and agree that it will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises or, if such lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make such loans and sell the same to the authority within a reasonable period of time;

(3) That the lender certify that the borrower is an individual who is actively engaged in or who will become actively engaged in an agricultural enterprise after he or she receives the loan or that the borrower is a firm, partnership, limited liability company, corporation, or other entity with all owners, partners, members, or stockholders thereof being natural persons who are actively engaged in or who will be actively engaged in an agricultural enterprise after the loan is received;

(4) That the aggregate amount of the loan received by a borrower shall not exceed five hundred seventeen thousand seven hundred dollars, as such amount shall be adjusted for inflation in accordance with section 147(c) of the Internal Revenue Code of 1986, as amended. In computing such amount a loan received by an individual shall be aggregated with those loans received by his or her spouse and minor children and a loan received by a firm, partnership, limited liability company, or corporation shall be aggregated with those loans received by each owner, partner, member, or stockholder thereof; and

(5) That the recipient of the loan be identified in the minutes of the authority prior to or at the time of adoption by the authority of the resolution authorizing the issuance of the bonds which will provide for financing of the loan.

**Source:** Laws 1983, LB 626, § 42; Laws 1991, LB 253, § 43; Laws 1993, LB 121, § 356; Laws 2005, LB 90, § 17; Laws 2015, LB515, § 1.

**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.

**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.

### 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 section 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. 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; Laws 2013, LB199, § 24; Laws 2013, LB214, § 9.

#### **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;

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

(14) Vocational training in the housing and construction trades industries by nonprofit groups.

**Source:** Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2; Laws 2011, LB388, § 12; Laws 2011, LB413, § 1; Laws 2013, LB199, § 25.

**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 thirty percent, to each congressional district. The department shall announce a grant and loan application period of at least ninety days duration for all projects. 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 are located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act, 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 Affordable Housing Trust Fund.

**Source:** Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3; Laws 2011, LB388, § 13; Laws 2014, LB800, § 5; Laws 2014, LB906, § 17; Laws 2015, LB457, § 1.

#### Cross References

**Enterprise Zone Act**, see section 13-2101.01.

### **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 applications 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 section 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; Laws 2013, LB214, § 10.

## ARTICLE 8

### **NEBRASKA EDUCATIONAL, HEALTH, AND SOCIAL SERVICES FINANCE AUTHORITY ACT**

#### Section

- 58-801. Act, how cited.
- 58-802. Legislative findings.
- 58-803. Definitions, where found.
- 58-804. Authority, defined.
- 58-805. Bonds, defined.
- 58-806. Cost, defined.

## EDUCATIONAL, HEALTH, AND SOCIAL SERVICES

### Section

- 58-807. Eligible institution, defined.
- 58-808. Private health care institution, defined.
- 58-809. Private institution of higher education, defined.
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- 58-811. Project, defined.
- 58-812. Property, defined.
- 58-813. Nebraska Educational, Health, and Social Services Finance Authority; created.
- 58-814. Authority; members; qualifications; appointment; terms; removal.
- 58-815. Authority; officers; executive director; compensation; receive contributions.
- 58-816. Authority; keep records and accounts; seal; certified copies.
- 58-817. Authority; quorum; actions; vacancy; effect; meetings.
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- 58-819. Authority; members; expenses.
- 58-820. Authority member or employee; conflict of interest; abstention.
- 58-821. Authority; purpose.
- 58-822. Authority; perpetual succession; bylaws.
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- 58-826. Authority; powers over project.
- 58-827. Authority; issuance of bonds authorized.
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- 58-835. Authority; administrative costs; apportionment.
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- 58-839. Authority; acquisition of property.
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- 58-843. Bonds; secured by trust indenture; contents; expenses; how treated.
- 58-844. Bonds issued to purchase securities of eligible institution; provisions applicable.
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- 58-846. Refunding bonds; issuance authorized; provisions applicable.
- 58-847. Bond issuance; state or political subdivision; no obligation; statement; expenses.
- 58-848. Authority; rents or loan payments; use.
- 58-849. Money received by authority; deemed trust funds; investment.
- 58-850. Bondholders and trustee; enforcement of rights.
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- 58-854. Bondholders; pledge; agreement of the state.
- 58-855. Act; supplemental to other laws.
- 58-856. Act; provisions controlling.
- 58-857. Nebraska Health Education Assistance Loan Program; established.
- 58-858. Nebraska Health Education Assistance Loan Program; authority; powers.
- 58-859. Nebraska Health Education Assistance Loan Program; loans; how funded.
- 58-860. Nebraska Health Education Assistance Loan Program; bonds or other obligations; how paid.
- 58-861. Nebraska Health Education Assistance Loan Program; bonds; security.
- 58-862. Nebraska Health Education Loan Repayment Fund; created; use.
- 58-863. Nebraska Student Loan Assistance Program; established.

## Section

- 58-864. Nebraska Student Loan Assistance Program; authority; powers.  
58-865. Nebraska Student Loan Assistance Program; loans; how funded.  
58-866. Change in name; effect.

**58-801 Act, how cited.**

Sections 58-801 to 58-866 shall be known and may be cited as the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 2; Laws 1993, LB 465, § 2; R.S.1943, (1994), § 79-2902; Laws 1995, LB 5, § 2; R.S.1943, (2008), § 85-1701; Laws 2013, LB170, § 1.

**58-802 Legislative findings.**

The Legislature finds and declares that:

(1) For the benefit of the people of the State of Nebraska, the increase of their commerce, welfare, and prosperity, and the fostering, protection, and improvement of their health and living conditions, it is essential that this and future generations of youth be given the greatest opportunity to learn and to fully develop their intellectual and mental capacities and skills and that there be encouraged, promoted, and supported adequate health, social, and emergency services for the care of and assistance to the people of the state;

(2) To achieve these ends it is of the utmost importance and in the public interest that private institutions of higher education within the state be provided with appropriate additional means of assisting such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills and that private health care institutions and private social services institutions within the state be provided with appropriate additional means of caring for and protecting the public health and welfare;

(3) It is the purpose of the Nebraska Educational, Health, and Social Services Finance Authority Act to provide a measure of assistance and an alternative method of enabling private institutions of higher education, private health care institutions, and private social services institutions in the state to finance the acquisition, construction, improvement, equipment, and renovation of needed educational, health care, and social services facilities and structures and to refund, refinance, or reimburse outstanding indebtedness incurred by them or advances made by them, including advances from an endowment or any other similar fund, for the acquisition, construction, improvement, equipment, or renovation of needed educational, health care, and social services facilities and structures;

(4) The financing and refinancing of educational, health care, and social services facilities, through means other than the appropriation of public funds to private institutions of higher education, private health care institutions, and private social services institutions, as described in the act, is a valid public purpose;

(5) The availability of improved access to health profession schools will benefit the people of the State of Nebraska and improve their health, welfare, and living conditions;

(6) The establishment of a health education loan program, with the proceeds of bonds to be used for the purchase or making of loans to students or certain former students of health profession schools, will improve the access to such



schools and assist such persons in meeting the expenses incurred in availing themselves of health education opportunities; and

(7) The establishment of a program to assist private institutions of higher education to provide loans to their full-time students pursuing an academic degree will improve access to higher education and contribute to the health, welfare, and living conditions in Nebraska.

**Source:** Laws 1981, LB 321, § 1; Laws 1983, LB 159, § 1; Laws 1993, LB 465, § 1; R.S.1943, (1994), § 79-2901; Laws 1995, LB 5, § 1; R.S.1943, (2008), § 85-1702; Laws 2013, LB170, § 2.

#### **58-803 Definitions, where found.**

For purposes of the Nebraska Educational, Health, and Social Services Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-804 to 58-812 shall apply.

**Source:** Laws 1981, LB 321, § 3; Laws 1983, LB 159, § 14; Laws 1993, LB 465, § 3; R.S.1943, (1994), § 79-2903; Laws 1995, LB 5, § 3; R.S.1943, (2008), § 85-1703; Laws 2013, LB170, § 3.

#### **58-804 Authority, defined.**

Authority means the Nebraska Educational, Health, and Social Services Finance Authority created by the Nebraska Educational, Health, and Social Services Finance Authority Act or any board, body, commission, department, or office succeeding to the principal functions thereof or to whom the powers conferred upon such authority by the act are given by law.

**Source:** Laws 1981, LB 321, § 4; Laws 1993, LB 465, § 4; R.S.1943, (1994), § 79-2904; Laws 1995, LB 5, § 4; R.S.1943, (2008), § 85-1704; Laws 2013, LB170, § 4.

#### **58-805 Bonds, defined.**

Bonds means bonds, notes, or other obligations of the authority issued under the Nebraska Educational, Health, and Social Services Finance Authority Act, including refunding bonds, notwithstanding that the same may be secured by the full faith and credit of an eligible institution or any other lawfully pledged security of an eligible institution.

**Source:** Laws 1981, LB 321, § 8; Laws 1993, LB 465, § 6; R.S.1943, (1994), § 79-2908; Laws 1995, LB 5, § 5; R.S.1943, (2008), § 85-1705; Laws 2013, LB170, § 5.

#### **58-806 Cost, defined.**

Cost as applied to a project or any portion thereof financed under the Nebraska Educational, Health, and Social Services Finance Authority Act means all or any part of the cost of acquisition, construction, improvement, equipment, and renovation of all land, buildings, or structures including the cost of machinery and equipment; finance charges; interest prior to, during, and after completion of such construction for a reasonable period as determined by the authority; reserves for principal and interest; extensions, enlargements, additions, replacements, renovations, and improvements; engineering, financial, and legal services; plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, bond issuance costs, and expenses

necessary or incidental to determining the feasibility or practicability of constructing the project; and such other expenses as the authority determines may be necessary or incidental to the acquisition, construction, improvement, equipment, and renovation of the project, the financing of such acquisition, construction, improvement, equipment, and renovation, and the placing of the project in operation.

**Source:** Laws 1981, LB 321, § 7; Laws 1993, LB 465, § 5; R.S.1943, (1994), § 79-2907; Laws 1995, LB 5, § 6; R.S.1943, (2008), § 85-1706; Laws 2013, LB170, § 6.

#### **58-807 Eligible institution, defined.**

Eligible institution means a private institution of higher education, a private health care institution, or a private social services institution.

**Source:** Laws 2013, LB170, § 7.

#### **58-808 Private health care institution, defined.**

Private health care institution means any private not-for-profit corporation or institution that (1) is licensed under the Health Care Facility Licensure Act, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 2013, LB170, § 8.

#### **Cross References**

Health Care Facility Licensure Act, see section 71-401.

#### **58-809 Private institution of higher education, defined.**

Private institution of higher education means a not-for-profit educational institution located within this state which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, which is authorized by law to provide a program of education beyond the high school level, and which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(2) Provides an educational program for which it awards a bachelor's degree; provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree; provides a program of not less than two years in length which is acceptable for full credit toward a bachelor's degree; or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, research, medicine, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(3) Is accredited by a regionally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer,

by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; and

(4) Has a student admissions policy that does not violate any other Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 1981, LB 321, § 9; R.S.1943, (1994), § 79-2909; Laws 1995, LB 5, § 7; Laws 1998, LB 303, § 1; R.S.1943, (2008), § 85-1707; Laws 2013, LB170, § 9.

**58-810 Private social services institution, defined.**

Private social services institution means any private not-for-profit corporation or institution that (1) provides health, safety, and welfare assistance, including emergency, social, housing, and related support services, to members of the general public in the state, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any Nebraska or federal law against discrimination on the basis of race, color, creed, national origin, ancestry, age, gender, or handicap.

**Source:** Laws 2013, LB170, § 10.

**58-811 Project, defined.**

(1) Project means any property located within the state that may be used or will be useful in connection with the instruction, feeding, recreation, or housing of students, the provision of health care services to members of the general public, the provision of social services to members of the general public, the conducting of research, administration, or other work of an eligible institution, or any combination of the foregoing. Project includes, but is not limited to, an academic facility, administrative facility, agricultural facility, assembly hall, assisted-living facility, athletic facility, auditorium, campus, communication facility, congregate care housing, emergency services facility, exhibition hall, health care facility, health service institution, hospital, housing for faculty and other staff, instructional facility, laboratory, library, maintenance facility, medical clinic, medical services facility, museum, nursing or skilled nursing services facility, offices, parking area, personal care services facility, physical educational facility, recreational facility, research facility, senior, retirement, or home care services facility, social services facility, stadium, storage facility, student facility, student health facility, student housing, student union, theatre, or utility facility.

(2) Project also means and includes the refunding or refinancing of outstanding obligations, mortgages, or advances, including advances from an endowment or similar fund, originally issued, made, or given by the eligible institution to finance the cost of a project or projects, and including the financing of eligible swap termination payments, whenever the authority finds that such refunding or refinancing is in the public interest and either:

(a) Alleviates a financial hardship upon the eligible institution;

(b) Results in a lesser cost of education, health care, housing, or social and related support services to the eligible institution's students, patients, residents, clients, and other general public consumers; or

(c) Enables the eligible institution to offer greater security for the financing of a new project or projects or to effect savings in interest costs or more favorable amortization terms.

**Source:** Laws 1981, LB 321, § 5; R.S.1943, (1994), § 79-2905; Laws 1995, LB 5, § 8; R.S.1943, (2008), § 85-1708; Laws 2013, LB170, § 11.

#### **58-812 Property, defined.**

Property means the real estate upon which a project is or will be located, including equipment, machinery, and other similar items necessary or convenient for the operation of the project in the manner for which its use is intended, but not including such items as fuel, supplies, or other items that are customarily deemed to result in a current operation charge. Property does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship nor any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion.

**Source:** Laws 1981, LB 321, § 6; R.S.1943, (1994), § 79-2906; Laws 1995, LB 5, § 9; R.S.1943, (2008), § 85-1709; Laws 2013, LB170, § 12.

#### **58-813 Nebraska Educational, Health, and Social Services Finance Authority; created.**

There is hereby created a body politic and corporate to be known as the Nebraska Educational, Health, and Social Services Finance Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by the Nebraska Educational, Health, and Social Services Finance Authority Act shall be deemed and held to be the performance of an essential public function of the state.

**Source:** Laws 1981, LB 321, § 10; Laws 1993, LB 465, § 7; R.S.1943, (1994), § 79-2910; Laws 1995, LB 5, § 10; R.S.1943, (2008), § 85-1710; Laws 2013, LB170, § 13.

#### **58-814 Authority; members; qualifications; appointment; terms; removal.**

(1) The authority shall consist of seven members, to be appointed by the Governor, who shall be residents of the state, not more than four of whom shall be members of the same political party.

(2) Of the seven members:

(a) At least one shall be a trustee, director, officer, or employee of one or more private institutions of higher education in the state;

(b) At least one shall be a person having a favorable reputation for skill, knowledge, and experience in the field of finance;

(c) At least one shall be a person experienced in and having a favorable reputation for skill, knowledge, and experience in the educational building construction field;

(d) At least one shall be a person experienced in and having a favorable reputation in the field of public accounting;

(e) After the initial appointment provided for in subdivision (3)(a) of this section is made, at least one shall be a trustee, director, officer, or employee of one or more private health care institutions in the state; and

(f) After the initial appointment provided for in subdivision (3)(b) of this section is made, at least one shall be a trustee, director, officer, or employee of one or more private social services institutions in the state.

(3) The initial appointments of the members described in subdivisions (2)(e) and (2)(f) of this section shall be made as follows:

(a) For the first member whose term expires after September 6, 2013, and who is not the sole member described in subdivision (2)(a), (2)(b), (2)(c), or (2)(d) of this section, the Governor shall appoint a successor who meets the qualifications described in subdivision (2)(e) of this section; and

(b) For the second member whose term expires after September 6, 2013, and who is not the sole member described in subdivision (2)(a), (2)(b), (2)(c), or (2)(d) of this section, the Governor shall appoint a successor who meets the qualifications described in subdivision (2)(f) of this section.

(4) The members of the authority first appointed shall serve for terms expiring as follows: One on December 31, 1982; two on December 31, 1983; two on December 31, 1984; and two on December 31, 1985, respectively, the term of each such member to be designated by the Governor. Upon the expiration of the term of any member, his or her successor shall be appointed for a term of four years and until a successor has been appointed and qualified. The Governor shall fill any vacancy for the remainder of the unexpired term. Any member of the authority may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless such notice and hearing shall be expressly waived in writing by the accused member. Each member shall be eligible for reappointment to a successive term but shall be declared ineligible for three consecutive full terms.

**Source:** Laws 1981, LB 321, § 11; Laws 1984, LB 644, § 1; R.S.1943, (1994), § 79-2911; Laws 1995, LB 5, § 11; R.S.1943, (2008), § 85-1711; Laws 2013, LB170, § 14.

**58-815 Authority; officers; executive director; compensation; receive contributions.**

Each year the authority shall elect one of its members as chairperson and another member as vice-chairperson. It may appoint an executive director and assistant executive director, who shall not be members of the authority but who shall serve at the pleasure of the authority. An assistant executive director shall perform the duties of the executive director in the event of the absence or inability to act of the executive director. They shall receive such compensation as shall be fixed by the authority. The authority may receive contributions to fund any of the expenses of the authority from private donors, including any one or more of the eligible institutions or any one or more associations representing the eligible institutions.

**Source:** Laws 1981, LB 321, § 12; Laws 1993, LB 465, § 8; R.S.1943, (1994), § 79-2912; Laws 1995, LB 5, § 12; R.S.1943, (2008), § 85-1712; Laws 2013, LB170, § 15.

**58-816 Authority; keep records and accounts; seal; certified copies.**

The executive director, assistant executive director, or any other person designated by resolution of the authority shall keep records and accounts of all proceedings and financial dealings of the authority, shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal, and shall be custodian of all funds of the authority. The executive director, assistant executive director, or other designated person may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

**Source:** Laws 1981, LB 321, § 13; R.S.1943, (1994), § 79-2913; Laws 1995, LB 5, § 13; R.S.1943, (2008), § 85-1713; Laws 2013, LB170, § 16.

**58-817 Authority; quorum; actions; vacancy; effect; meetings.**

Four members of the authority shall constitute a quorum. The affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the Nebraska Educational, Health, and Social Services Finance Authority Act may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. Members of the authority may participate in a regular or special meeting of the authority by telephone conference call or videoconference as long as the chairperson or vice-chairperson conducts the meeting at a location where the public is able to participate by attendance at that location and the telephone conference call or videoconference otherwise conforms to the requirements of subdivisions (2)(a) through (e) of section 84-1411.

**Source:** Laws 1981, LB 321, § 14; Laws 1984, LB 644, § 2; Laws 1993, LB 465, § 9; R.S.1943, (1994), § 79-2914; Laws 1995, LB 5, § 14; R.S.1943, (2008), § 85-1714; Laws 2013, LB170, § 17.

**58-818 Authority; officers, members, and employees; surety bond requirements.**

Before the issuance of any bonds under the Nebraska Educational, Health, and Social Services Finance Authority Act, the chairperson, vice-chairperson, executive director, and assistant executive director, if any, and any other member of the authority authorized by resolution of the authority to handle funds or sign checks of the authority shall execute a surety bond in such amount as a majority of the members of the authority determine, or alternatively, the chairperson of the authority shall execute a blanket bond effecting such coverage. Each surety bond shall be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety company authorized to transact business in this state, and the cost of each such surety bond shall be paid by the authority.

**Source:** Laws 1981, LB 321, § 15; Laws 1993, LB 465, § 10; R.S.1943, (1994), § 79-2915; Laws 1995, LB 5, § 15; R.S.1943, (2008), § 85-1715; Laws 2013, LB170, § 18.



**58-819 Authority; members; expenses.**

The members of the authority shall receive no compensation for the performance of their duties as members, but each such member shall be paid his or her actual and necessary expenses while engaged in the performance of such duties as provided in sections 81-1174 to 81-1177 from any funds legally available therefor.

**Source:** Laws 1981, LB 321, § 16; R.S.1943, (1994), § 79-2916; Laws 1995, LB 5, § 16; R.S.1943, (2008), § 85-1716; Laws 2013, LB170, § 19.

**58-820 Authority member or employee; conflict of interest; abstention.**

Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer, or employee of any educational institution, health care institution, social services institution, financial institution, commercial bank or trust company, architecture firm, insurance company, or any firm, person, or corporation to serve as a member of the authority, but such trustee, director, officer, or employee shall abstain from any deliberation or action by the authority when the business affiliation of any such trustee, director, officer, or employee is involved. The executive director may serve less than full time. If the executive director serves less than full time, his or her other employment, if any, shall be reviewed by the members of the authority for potential conflicts of interest and whether such other employment would prevent the executive director from fully discharging his or her duties. No member of the authority may be a representative of a bank, investment banking firm, or other financial institution that underwrites the bonds of the authority.

**Source:** Laws 1981, LB 321, § 17; R.S.1943, (1994), § 79-2917; Laws 1995, LB 5, § 17; R.S.1943, (2008), § 85-1717; Laws 2013, LB170, § 20.

**58-821 Authority; purpose.**

The purpose of the authority shall be to assist eligible institutions in the acquisition, construction, improvement, equipment, renovation, financing, and refinancing of projects and to administer and operate the Nebraska Health Education Assistance Loan Program as provided in sections 58-857 to 58-862 and the Nebraska Student Loan Assistance Program as provided in sections 58-863 to 58-865.

**Source:** Laws 1981, LB 321, § 18; Laws 1983, LB 159, § 3; Laws 1993, LB 465, § 11; R.S.1943, (1994), § 79-2918; Laws 1995, LB 5, § 18; R.S.1943, (2008), § 85-1718; Laws 2013, LB170, § 21.

**58-822 Authority; perpetual succession; bylaws.**

The authority shall have perpetual succession as a body politic and corporate and may adopt bylaws for the regulation of its affairs and the conduct of its business.

**Source:** Laws 1981, LB 321, § 19; R.S.1943, (1994), § 79-2919; Laws 1995, LB 5, § 19; R.S.1943, (2008), § 85-1719; Laws 2013, LB170, § 22.

**58-823 Authority; adopt seal.**

The authority may adopt an official seal and alter the same at its pleasure.

**Source:** Laws 1981, LB 321, § 20; R.S.1943, (1994), § 79-2920; Laws 1995, LB 5, § 20; R.S.1943, (2008), § 85-1720; Laws 2013, LB170, § 23.

**58-824 Authority; office; location.**

The authority may maintain an office at such place or places within Nebraska as it may designate.

**Source:** Laws 1981, LB 321, § 21; R.S.1943, (1994), § 79-2921; Laws 1995, LB 5, § 21; R.S.1943, (2008), § 85-1721; Laws 2013, LB170, § 24.

**58-825 Authority; sue and be sued.**

The authority may sue and be sued in its own name.

**Source:** Laws 1981, LB 321, § 22; R.S.1943, (1994), § 79-2922; Laws 1995, LB 5, § 22; R.S.1943, (2008), § 85-1722; Laws 2013, LB170, § 25.

**58-826 Authority; powers over project.**

The authority may determine the location and character of any project to be financed or refinanced under the Nebraska Educational, Health, and Social Services Finance Authority Act and acquire, construct, reconstruct, improve, equip, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same. The authority may also enter into contracts for any or all of such purposes, enter into contracts for the management and operation of a project, and designate an eligible institution as its agent to determine the location and character of a project undertaken by such eligible institution under the act and, as the agent of the authority, to acquire, construct, reconstruct, improve, equip, remodel, renovate, replace, maintain, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project.

**Source:** Laws 1981, LB 321, § 23; Laws 1993, LB 465, § 12; R.S.1943, (1994), § 79-2923; Laws 1995, LB 5, § 23; R.S.1943, (2008), § 85-1723; Laws 2013, LB170, § 26.

**58-827 Authority; issuance of bonds authorized.**

The authority may issue bonds of the authority for any of its corporate purposes and fund or refund the same pursuant to the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 24; Laws 1993, LB 465, § 13; R.S.1943, (1994), § 79-2924; Laws 1995, LB 5, § 24; R.S.1943, (2008), § 85-1724; Laws 2013, LB170, § 27.

**58-828 Authority; charge for services.**

The authority may charge and collect rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and contract with any person, partnership, limited liability company, association, or corporation or other body public or private, except

that the authority shall have no jurisdiction over rates, rents, fees, and charges established by an eligible institution for its students, patients, residents, clients, or other consumers other than to require that such rates, rents, fees, and charges by such eligible institution be sufficient to discharge such institution's obligation to the authority.

**Source:** Laws 1981, LB 321, § 25; Laws 1993, LB 121, § 520; R.S.1943, (1994), § 79-2925; Laws 1995, LB 5, § 25; R.S.1943, (2008), § 85-1725; Laws 2013, LB170, § 28.

**58-829 Authority; rules and regulations for use of project; designate agent.**

The authority may establish rules and regulations for the use of a project or any portion thereof and designate an eligible institution as its agent to establish rules and regulations for the use of a project undertaken by such eligible institution.

**Source:** Laws 1981, LB 321, § 26; R.S.1943, (1994), § 79-2926; Laws 1995, LB 5, § 26; R.S.1943, (2008), § 85-1726; Laws 2013, LB170, § 29.

**58-830 Authority; personnel.**

The authority may employ consulting engineers, architects, attorneys, accountants, trustees, construction and finance experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and fix their compensation.

**Source:** Laws 1981, LB 321, § 27; R.S.1943, (1994), § 79-2927; Laws 1995, LB 5, § 27; R.S.1943, (2008), § 85-1727; Laws 2013, LB170, § 30.

**58-831 Authority; receive loans, grants, and contributions.**

The authority may receive and accept from any source loans or grants for or in aid of the acquisition, construction, improvement, equipment, or renovation of a project or any portion thereof, and receive and accept from any source loans, grants, aid, or contributions of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such loans, grants, aid, or contributions are made.

**Source:** Laws 1981, LB 321, § 28; R.S.1943, (1994), § 79-2928; Laws 1995, LB 5, § 28; R.S.1943, (2008), § 85-1728; Laws 2013, LB170, § 31.

**58-832 Authority; mortgage of certain property.**

The authority may mortgage all or any portion of any project or any other facilities conveyed to the authority for such purpose and the site or sites thereof, whether presently owned or subsequently acquired, for the benefit of the holders of the bonds of the authority issued to finance such project or any portion thereof or issued to refund or refinance outstanding indebtedness or to reimburse an endowment or any similar fund of an eligible institution as permitted by the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 29; Laws 1993, LB 465, § 14; R.S.1943, (1994), § 79-2929; Laws 1995, LB 5, § 29; R.S.1943, (2008), § 85-1729; Laws 2013, LB170, § 32.

**58-833 Authority; loans authorized; limitation.**

The authority may make loans to any eligible institution for the cost of any project or in anticipation of the receipt of tuition or other revenue by the eligible institution in accordance with an agreement between the authority and such eligible institution, except that (1) no such loan shall exceed the total cost of such project as determined by such eligible institution and approved by the authority and (2) any loan made in anticipation of the receipt of tuition or other revenue shall not exceed the anticipated amount of tuition or other revenue to be received by the eligible institution in the one-year period following the date of such loan.

**Source:** Laws 1981, LB 321, § 30; R.S.1943, (1994), § 79-2930; Laws 1995, LB 5, § 30; Laws 2003, LB 107, § 1; R.S.1943, (2008), § 85-1730; Laws 2013, LB170, § 33.

**58-834 Authority; issue bonds; make loans; conditions.**

The authority may issue bonds and make loans to an eligible institution and refund or reimburse outstanding obligations, mortgages, or advances, including advances from an endowment or any similar fund, issued, made, or given by such eligible institution for the cost of a project, including the power to issue bonds and make loans to an eligible institution to refinance indebtedness incurred or to reimburse advances made for projects undertaken prior thereto whenever the authority has received a written letter of intent to underwrite, place, or purchase the bonds from a financial institution having the powers of an investment bank, commercial bank, or trust company and finds that such financing or refinancing is in the public interest, and either: (1) Alleviates a financial hardship upon the eligible institution; (2) results in a lesser cost of education, health care services, or social services; or (3) enables the eligible institution to offer greater security for a loan or loans to finance a new project or projects or to effect savings in interest costs or more favorable amortization terms.

**Source:** Laws 1981, LB 321, § 31; R.S.1943, (1994), § 79-2931; Laws 1995, LB 5, § 31; R.S.1943, (2008), § 85-1731; Laws 2013, LB170, § 34.

**58-835 Authority; administrative costs; apportionment.**

The authority may charge to and equitably apportion among participating eligible institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 32; Laws 1993, LB 465, § 15; R.S.1943, (1994), § 79-2932; Laws 1995, LB 5, § 32; R.S.1943, (2008), § 85-1732; Laws 2013, LB170, § 35.

**58-836 Authority; general powers; joint projects.**

The authority may do all things necessary or convenient to carry out the purposes of the Nebraska Educational, Health, and Social Services Finance Authority Act.

In carrying out the purposes of the act, the authority may undertake a project for two or more eligible institutions jointly, or for any combination thereof, and

thereupon all other provisions of the act shall apply to and be for the benefit of the authority and such joint participants.

**Source:** Laws 1981, LB 321, § 33; Laws 1993, LB 465, § 16; R.S.1943, (1994), § 79-2933; Laws 1995, LB 5, § 33; R.S.1943, (2008), § 85-1733; Laws 2013, LB170, § 36.

**58-837 Authority; combine and substitute projects; bonds; additional series.**

Notwithstanding any other provision contained in the Nebraska Educational, Health, and Social Services Finance Authority Act, the authority may combine for financing purposes, with the consent of all of the eligible institutions which are involved, the project or projects and some or all future projects of any eligible institutions, but the money set aside in any fund or funds pledged for any series or issue of bonds shall be held for the sole benefit of such series or issue separate and apart from any money pledged for any other series or issue of bonds of the authority. To facilitate the combining of projects, bonds may be issued in series under one or more resolutions or trust indentures and be fully open end, thus providing for the unlimited issuance of additional series, or partially open end, limited as to additional series, all in the discretion of the authority. Notwithstanding any other provision of the act to the contrary, the authority may, in its discretion, permit an eligible institution to substitute one or more projects of equal value, as determined by an independent appraiser satisfactory to the authority, for any project financed under the act on such terms and subject to such conditions as the authority may prescribe.

**Source:** Laws 1981, LB 321, § 34; Laws 1993, LB 465, § 17; R.S.1943, (1994), § 79-2934; Laws 1995, LB 5, § 34; R.S.1943, (2008), § 85-1734; Laws 2013, LB170, § 37.

**58-838 Expenses; how paid; liability; limitation.**

All expenses incurred in carrying out the Nebraska Educational, Health, and Social Services Finance Authority Act shall be payable solely from funds provided under the act, and no liability or obligation shall be incurred by the authority beyond the extent to which money has been provided under the act.

**Source:** Laws 1981, LB 321, § 35; Laws 1993, LB 465, § 18; R.S.1943, (1994), § 79-2935; Laws 1995, LB 5, § 35; R.S.1943, (2008), § 85-1735; Laws 2013, LB170, § 38.

**58-839 Authority; acquisition of property.**

The authority is authorized and empowered, directly or by and through an eligible institution, as its agent, to acquire by purchase, gift, or devise, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and other interests in lands, and including existing facilities of an eligible institution, as it may deem necessary or convenient for the acquisition, construction, improvement, equipment, renovation, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of an eligible institution as its agent.

**Source:** Laws 1981, LB 321, § 36; R.S.1943, (1994), § 79-2936; Laws 1995, LB 5, § 36; R.S.1943, (2008), § 85-1736; Laws 2013, LB170, § 39.

**58-840 Authority; financing obligations completed; convey title to eligible institution.**

When the principal of and interest on bonds of the authority issued to finance the cost of a particular project or projects for an eligible institution, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution and any trust indenture authorizing the same have been satisfied and the lien created by such resolution or trust indenture has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds, conveyances, and other instruments, if any, as are necessary and required to convey title to such project or projects to such eligible institution.

**Source:** Laws 1981, LB 321, § 37; R.S.1943, (1994), § 79-2937; Laws 1995, LB 5, § 37; R.S.1943, (2008), § 85-1737; Laws 2013, LB170, § 40.

**58-841 Authority; bonds; issuance; form; proceeds; how used; replacement; liability; liability insurance; indemnification.**

The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds for the purpose of (1) paying, refinancing, or reimbursing all or any part of the cost of a project, (2) administering and operating the Nebraska Health Education Assistance Loan Program and the Nebraska Student Loan Assistance Program, or (3) making loans to any eligible institution in anticipation of the receipt of tuition or other revenue by the eligible institution. Except to the extent payable from payments to be made on securities or federally guaranteed securities as provided in sections 58-844 and 58-845, the principal of and the interest on such bonds shall be payable solely out of the revenue of the authority derived from the project or program to which they relate and from any other facilities or assets pledged or made available therefor by the eligible institution for whose benefit such bonds were issued. The bonds of each issue shall be dated, shall bear interest at such rate or rates, including variations of such rates, without regard to any limit contained in any other statute or law of the State of Nebraska, shall mature at such time or times not exceeding forty years from the date thereof, all as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices, which may be at a premium or discount, and under such terms and conditions as may be fixed by the authority in the authorizing resolution and any trust indenture. Except to the extent required by the Nebraska Educational, Health, and Social Services Finance Authority Act and for bonds issued to fund the Nebraska Student Loan Assistance Program, such bonds are to be paid out of the revenue of the project to which they relate and, in certain instances, the revenue of certain other facilities, and subject to the provisions of sections 58-844 and 58-845 with respect to a pledge of securities or government securities, the bonds may be unsecured or secured in the manner and to the extent determined by the authority in its discretion.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest which may be at any bank or trust company within or without the state. The



bonds shall be signed in the name of the authority, by its chairperson or vice-chairperson or by a facsimile signature of such person, the official seal of the authority or a facsimile thereof shall be affixed thereto or printed or impressed thereon and attested by the manual or facsimile signature of the executive director or assistant executive director of the authority, except that facsimile signatures of members of the authority shall be sufficient only if the resolution or trust indenture requires that the trustee for such bond issue manually authenticate each bond and the resolution or trust indenture permits the use of facsimile signatures, and any coupons attached to the bonds shall bear the facsimile signature of the executive director or assistant executive director of the authority. The resolution or trust indenture authorizing the bonds may provide that the bonds contain a recital that they are issued under the Nebraska Educational, Health, and Social Services Finance Authority Act, and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. The provisions of section 10-126 shall not apply to bonds issued by the authority. The provisions of section 10-140 shall apply to bonds issued by the authority. In case any official of the authority whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such an official before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained an official of the authority until such delivery.

All bonds issued under the act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the law of the State of Nebraska. The bonds may be issued in coupon or in registered form, or both, and one form may be exchangeable for the other in such manner as the authority may determine. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The bonds may be sold in such manner, either at public or private sale, as the authority may determine.

The proceeds of the bonds of each issue shall be used solely for the payment of the costs of the project or program for which such bonds have been issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust indenture provided for in section 58-843 securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, are less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue exceed the cost of the project or program for which they were issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or shall be applied as may otherwise be permitted by applicable federal income tax laws relating to the tax exemption of interest.

Prior to the preparation of definitive bonds, the authority may under like restrictions issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

The authority may also provide for the replacement of any bonds which become mutilated or are destroyed or lost. Bonds may be issued under the act without obtaining the consent of any officer, department, division, commission, board, bureau, or agency of the state and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by the act. The authority may out of any funds available therefor purchase its bonds. The authority may hold, pledge, cancel, or resell such bonds, subject to and in accordance with any agreement with the bondholders.

Members of the authority shall not be liable to the state, the authority, or any other person as a result of their activities, whether ministerial or discretionary, as authority members, except for willful dishonesty or intentional violations of law. Members of the authority and any person executing bonds or policies of insurance shall not be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof. The authority may purchase liability insurance for members, officers, and employees and may indemnify any authority member to the same extent that a school district may indemnify a school board member pursuant to section 79-516.

**Source:** Laws 1981, LB 321, § 38; Laws 1983, LB 159, § 4; Laws 1993, LB 465, § 19; R.S.1943, (1994), § 79-2938; Laws 1995, LB 5, § 38; Laws 2003, LB 107, § 2; Laws 2011, LB424, § 1; R.S.Supp.,2012, § 85-1738; Laws 2013, LB170, § 41.

**58-842 Bond issuance; resolution; provisions enumerated.**

Any resolution or resolutions authorizing any bonds or any issue of bonds and any trust indenture securing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to (1) pledging or assigning the revenue of the project or loan with respect to which such bonds are to be issued or the revenue of any other property, facilities, or loans, (2) the rentals, fees, loan payments, and other amounts to be charged, the amounts to be raised in each year thereby, and the use and disposition of such amounts, (3) the setting aside of reserves or sinking funds, and the regulation, investment, and disposition thereof, (4) limitations on the use of the project, (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds, (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds, (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given, (8) limitations on the amount of money derived from the project or loan to be expended for operating, administrative, or other expenses of the authority, (9) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default, (10) the mortgaging of a project and the site thereof or any other property for the purpose of securing the bondholders, and (11) any other matters relating to the bonds which the authority deems desirable.

**Source:** Laws 1981, LB 321, § 39; Laws 1983, LB 159, § 5; R.S.1943, (1994), § 79-2939; Laws 1995, LB 5, § 39; R.S.1943, (2008), § 85-1739; Laws 2013, LB170, § 42.

**58-843 Bonds; secured by trust indenture; contents; expenses; how treated.**

In the discretion of the authority any bonds issued under the Nebraska Educational, Health, and Social Services Finance Authority Act may be secured by a trust indenture, which trust indenture may be in the form of a bond resolution or similar contract, by and between the authority and a corporate trustee or trustees which may be any financial institution having the power of a trust company or any trust company within or outside the state. Such trust indenture providing for the issuance of such bonds may pledge or assign the revenue to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust indenture by which a pledge is created or an assignment made shall be filed in the records of the authority.

Any pledge or assignment made by the authority pursuant to this section shall be valid and binding from the time that the pledge or assignment is made, and the revenue so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge or assignment without physical delivery thereof or any further act. The lien of such pledge or assignment shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether such parties have notice thereof.

Such trust indenture may set forth the rights and remedies of the bondholders and of the trustee or trustees, may restrict the individual right of action by bondholders, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee or trustees as may be reasonable and proper, not in violation of law, or provided for in the Nebraska Educational, Health, and Social Services Finance Authority Act. Any such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

Any bank or trust company which acts as depository of the proceeds of the bonds, any revenue, or other money shall furnish such indemnifying bonds or pledge such securities as may be required by the authority.

All expenses incurred in carrying out the provisions of such trust indenture may be treated as a part of the cost of the operation of a project.

**Source:** Laws 1981, LB 321, § 40; Laws 1993, LB 465, § 20; R.S.1943, (1994), § 79-2940; Laws 1995, LB 5, § 40; R.S.1943, (2008), § 85-1740; Laws 2013, LB170, § 43.

**58-844 Bonds issued to purchase securities of eligible institution; provisions applicable.**

In addition to any other methods of financing authorized in the Nebraska Educational, Health, and Social Services Finance Authority Act, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from an endowment or any similar fund of an eligible institution as authorized by section 58-834 by issuing its bonds for the purpose of purchasing the securities of the eligible institution. Any such securities shall have the same principal amounts, maturities, and interest rates as the bonds being issued, may be secured by a first mortgage lien on or security interest in any real or personal property, subject to such exceptions as the authority may approve and created by a mortgage or security instrument satisfactory to the authority, and may be insured or guaranteed by others. Any such bonds shall be

secured by a pledge of such securities under the trust indenture securing such bonds, shall be payable solely out of the payments to be made on such securities, and shall not exceed in principal amount the cost of such project or program, the refunding of such indebtedness, or reimbursement of such advances as determined by the eligible institution and approved by the authority. In other respects any such bonds shall be subject to the act, including sections 58-841 and 58-842, and the trust indenture securing such bonds may contain any of the provisions set forth in section 58-843 as the authority may consider appropriate.

If a project is financed pursuant to this section, the title to such project shall remain in the eligible institution owning such project, subject to the lien of the mortgage or security interest, if any, securing the securities then being purchased, and there shall be no lease of such facility between the authority and such eligible institution.

Section 58-840 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the eligible institution issuing such securities when such bonds have been fully paid and retired or when adequate provision has been made to pay and retire such bonds fully and all other conditions of the trust indenture securing such bonds have been satisfied and any lien established pursuant to this section has been released in accordance with the provisions of the trust indenture.

**Source:** Laws 1981, LB 321, § 41; Laws 1993, LB 465, § 21; R.S.1943, (1994), § 79-2941; Laws 1995, LB 5, § 41; R.S.1943, (2008), § 85-1741; Laws 2013, LB170, § 44.

**58-845 Bonds issued to acquire federally guaranteed securities; provisions applicable.**

Notwithstanding any other provision of the Nebraska Educational, Health, and Social Services Finance Authority Act to the contrary, the authority may finance the cost of a project or program, refund outstanding indebtedness, or reimburse advances from any endowment or any similar fund of an eligible institution as authorized by the act, by issuing its bonds pursuant to a plan of financing involving the acquisition of any federally guaranteed security or securities or the acquisition or entering into of commitments to acquire any federally guaranteed security or securities. For purposes of this section, federally guaranteed security means any direct obligation of or obligation the principal of and interest on which are fully guaranteed or insured by the United States of America or any obligation issued by or the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States of America, including without limitation any such obligation that is issued pursuant to the National Housing Act, or any successor provision of law, each as amended from time to time.

In furtherance of the powers granted in this section, the authority may acquire or enter into commitments to acquire any federally guaranteed security and pledge or otherwise use any such federally guaranteed security in such manner as the authority deems in its best interest to secure or otherwise provide a source of repayment of any of its bonds issued to finance or refinance a project or program or may enter into any appropriate agreement with any eligible institution whereby the authority may make a loan to any such eligible

institution for the purpose of acquiring or entering into commitments to acquire any federally guaranteed security.

Any agreement entered into pursuant to this section may contain such provisions as are deemed necessary or desirable by the authority for the security or protection of the authority or the holders of such bonds, except that the authority, prior to making any such acquisition, commitment, or loan, shall first determine and enter into an agreement with any such eligible institution or any other appropriate institution or corporation to require that the proceeds derived from the acquisition of any such federally guaranteed security will be used, directly or indirectly, for the purpose of financing or refinancing a project or program.

Any bonds issued pursuant to this section shall not exceed in principal amount the cost of financing or refinancing such project or program as determined by the participating eligible institution and approved by the authority, except that such costs may include, without limitation, all costs and expenses necessary or incidental to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any insurance or guarantee of any obligation issued or incurred in connection with any federally guaranteed security. In other respects any such bonds shall be subject to the Nebraska Educational, Health, and Social Services Finance Authority Act, including sections 58-841 and 58-842, and the trust indenture securing such bonds may contain such of the provisions set forth in section 58-843 as the authority may deem appropriate.

If a project is financed or refinanced pursuant to this section, the title to such project shall remain in the participating eligible institution owning the project, subject to the lien of any mortgage or security interest securing, directly or indirectly, the federally guaranteed securities then being purchased or to be purchased, and there shall be no lease of such facility between the authority and such eligible institution.

Section 58-840 shall not apply to any project financed pursuant to this section, but the authority shall return the securities purchased through the issuance of bonds pursuant to this section to the issuer of such securities when such securities have been fully paid, when such bonds have been fully paid and retired, or when adequate provision, not involving the application of such securities, has been made to pay and retire such bonds fully, all other conditions of the trust indenture securing such bonds have been satisfied, and the lien on such bonds has been released in accordance with the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1981, LB 321, § 42; Laws 1993, LB 465, § 22; R.S.1943, (1994), § 79-2942; Laws 1995, LB 5, § 42; R.S.1943, (2008), § 85-1742; Laws 2013, LB170, § 45.

**58-846 Refunding bonds; issuance authorized; provisions applicable.**

The authority is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued by it under the Nebraska Educational, Health, and Social Services Finance Authority Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of maturity or earlier redemption of such bonds, and, in the case of a project and if deemed advisable by the authority, for the additional purposes of acquiring,

constructing, improving, equipping, and renovating improvements, extensions, or enlargements of the project in connection with which the bonds to be refunded were issued and of paying any expenses which the authority determines may be necessary or incidental to the issuance of such refunding bonds and the acquiring, constructing, improving, equipping, and renovating of such improvements, extensions, or enlargements. Such refunding bonds shall be payable solely out of the revenue of the project, including any such improvements, extensions, or enlargements thereto, or program to which the bonds being refunded relate or as otherwise described in sections 58-841, 58-844, 58-845, 58-860, and 58-861. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, the rights, duties, and obligations of the authority with respect to such bonds, and the manner of sale thereof shall be governed by the act insofar as applicable.

The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or earlier redemption of such outstanding bonds either on their earliest or any subsequent redemption date, upon the purchase of such bonds, or at the maturity of such bonds and may, pending such application, be placed in escrow to be applied to such purchase, retirement at maturity, or earlier redemption.

Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America or obligations the timely payment of principal and interest on which is fully guaranteed by the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment of the principal of and interest and redemption premium, if any, on the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. Only after the terms of the escrow have been fully satisfied and carried out may any balance of such proceeds, interest, income, or profits earned or realized on the investments thereof be returned to the eligible institution for whose benefit the refunded bonds were issued for use by it in any lawful manner.

All such bonds shall be subject to the act in the same manner and to the same extent as other revenue bonds issued pursuant to the act.

**Source:** Laws 1981, LB 321, § 43; Laws 1983, LB 159, § 6; Laws 1993, LB 465, § 23; R.S.1943, (1994), § 79-2943; Laws 1995, LB 5, § 43; R.S.1943, (2008), § 85-1743; Laws 2013, LB170, § 46.

**58-847 Bond issuance; state or political subdivision; no obligation; statement; expenses.**

Bonds issued pursuant to the Nebraska Educational, Health, and Social Services Finance Authority Act shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be a limited obligation of the authority payable solely from the funds, securities, or government securities pledged for their payment as authorized in the act unless such bonds are refunded by refunding bonds issued under the act, which refunding bonds shall be payable solely from funds, securities, or government securities pledged for their payment as authorized in the act. All such revenue bonds shall contain on the face thereof a statement to the effect that the bonds, as to both



principal and interest, are not an obligation of the State of Nebraska or of any political subdivision thereof but are limited obligations of the authority payable solely from revenue, securities, or government securities, as the case may be, pledged for their payment. All expenses incurred in carrying out the act shall be payable solely from funds provided under the authority of the act, and nothing contained in the act shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision thereof.

**Source:** Laws 1981, LB 321, § 44; Laws 1993, LB 465, § 24; R.S.1943, (1994), § 79-2944; Laws 1995, LB 5, § 44; R.S.1943, (2008), § 85-1744; Laws 2013, LB170, § 47.

**58-848 Authority; rents or loan payments; use.**

Except for projects financed or refinanced pursuant to sections 58-844 and 58-845, the authority shall fix, revise, charge, and collect rents or loan payments for the use of or payment for each project and contract with any eligible institution in respect thereof. Each lease or loan agreement entered into by the authority with an eligible institution shall provide that the rents or loan payments payable by the eligible institution shall be sufficient at all times (1) to pay the eligible institution's share of the administrative costs and expenses of the authority, (2) to pay the authority's cost, if any, of maintaining, repairing, and operating the project and each and every portion thereof, (3) to pay the principal of, the premium, if any, and the interest on outstanding bonds of the authority issued with respect to such project as the same shall become due and payable, and (4) to create and maintain reserves which may be provided for in the resolution or trust indenture relating to such bonds of the authority.

With respect to projects financed pursuant to sections 58-844 and 58-845, the authority shall require the eligible institution involved to enter into loan or other financing agreements obligating such eligible institution to make payments sufficient to accomplish the purposes described in this section.

**Source:** Laws 1981, LB 321, § 45; R.S.1943, (1994), § 79-2945; Laws 1995, LB 5, § 45; R.S.1943, (2008), § 85-1745; Laws 2013, LB170, § 48.

**58-849 Money received by authority; deemed trust funds; investment.**

All money received by the authority, whether as proceeds from the sale of bonds, from revenue, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in the Nebraska Educational, Health, and Social Services Finance Authority Act but, prior to the time when needed for use, may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America, obligations issued by agencies of the United States of America, any obligations of the United States of America or agencies thereof, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341, except that any funds pledged to secure a bond issue shall be invested in the manner permitted by the resolution or trust indenture securing such bonds. Such funds shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in such accounts shall be paid

out on checks signed by the executive director or other officers or employees of the authority as the authority authorizes. All deposits of money shall, if required by the authority, be secured in such a manner as the authority determines to be prudent, and all banks or trust companies may give security for the deposits, except to the extent provided otherwise in the resolution authorizing the issuance of the related bonds or in the trust indenture securing such bonds. The resolution authorizing the issuance of such bonds or the trust indenture securing such bonds shall provide that any officer to whom or any bank or trust company to which such money is entrusted shall act as trustee of such money and shall hold and apply the same for the purposes of the Nebraska Educational, Health, and Social Services Finance Authority Act, subject to the act, and of the authorizing resolution or trust indenture.

**Source:** Laws 1981, LB 321, § 46; Laws 1993, LB 465, § 25; R.S.1943, (1994), § 79-2946; Laws 1995, LB 5, § 46; R.S.1943, (2008), § 85-1746; Laws 2013, LB170, § 49.

#### **58-850 Bondholders and trustee; enforcement of rights.**

Any holder of bonds or of any of the coupons appertaining thereto issued under the Nebraska Educational, Health, and Social Services Finance Authority Act and the trustee under any trust indenture, except to the extent the rights given in the act may be restricted by the resolution or trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state, the act, or such trust indenture or resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by the act or by such trust indenture or resolution to be performed by the authority or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, rents, loan payments, fees, and charges authorized in the act and required by the provisions of such resolution or trust indenture to be fixed, established, and collected.

Such rights shall include the right to compel the performance of all duties of the authority required by the act or the resolution or trust indenture to enjoin unlawful activities and, in the event of default with respect to the payment of any principal of and premium, if any, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the resolution or trust indenture, to apply to a court having jurisdiction of the cause to appoint a receiver to administer and operate a project, the revenue of which is pledged to the payment of the principal of and premium, if any, and interest on such bonds, with full power to pay and to provide for payment of the principal of and premium, if any, and interest on such bonds, and with such powers, subject to the direction of the court, as are permitted by law and are accorded receivers in general equity cases, excluding any power to pledge additional revenue of the authority to the payment of such principal, premium, and interest, and to foreclose the mortgage on the project in the same manner as the foreclosure of a mortgage on real estate of private corporations.

**Source:** Laws 1981, LB 321, § 47; Laws 1993, LB 465, § 26; R.S.1943, (1994), § 79-2947; Laws 1995, LB 5, § 47; R.S.1943, (2008), § 85-1747; Laws 2013, LB170, § 50.

#### **58-851 Act, how construed.**

The Nebraska Educational, Health, and Social Services Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

**Source:** Laws 1981, LB 321, § 48; Laws 1993, LB 465, § 27; R.S.1943, (1994), § 79-2948; Laws 1995, LB 5, § 48; R.S.1943, (2008), § 85-1748; Laws 2013, LB170, § 51.

**58-852 Authority; journal; public records.**

All final actions of the authority shall be recorded in a journal, and the journal and all instruments and documents relating thereto shall be kept on file at the office of the authority and shall be open to the inspection of the public at all reasonable times.

**Source:** Laws 1981, LB 321, § 49; R.S.1943, (1994), § 79-2949; Laws 1995, LB 5, § 49; R.S.1943, (2008), § 85-1749; Laws 2013, LB170, § 52.

**58-853 Authority; public purpose; exemptions from taxation.**

The exercise of the powers granted by the Nebraska Educational, Health, and Social Services Finance Authority Act shall be in all respects for the benefit of the people of the state, for the increase of their commerce, welfare, and prosperity, for the fostering, encouragement, protection, and improvement of their health and living conditions, and for the development of their intellectual and mental capacities and skills, and as the operation, maintenance, financing, or refinancing of a project or program by the authority or its agent will constitute the performance of essential governmental functions and serve a public purpose, neither the authority nor its agent shall be required to pay any taxes or assessments, upon or with respect to a project or any property acquired or used by the authority or its agent under the act, upon the income therefrom, or upon any other amounts received by the authority in respect thereof, including payments of principal of or premium or interest on or in respect of any securities purchased pursuant to section 58-844 or any government securities involved in a plan of financing pursuant to section 58-845. The bonds issued under the act, the interest thereon, the proceeds received by a holder from the sale of such bonds to the extent of the holder's cost of acquisition, or proceeds received upon redemption prior to maturity, proceeds received at maturity, and the receipt of such interest and proceeds shall be exempt from taxation in the State of Nebraska for all purposes except the state inheritance tax.

**Source:** Laws 1981, LB 321, § 50; Laws 1993, LB 465, § 28; R.S.1943, (1994), § 79-2950; Laws 1995, LB 5, § 50; R.S.1943, (2008), § 85-1750; Laws 2013, LB170, § 53.

**58-854 Bondholders; pledge; agreement of the state.**

The State of Nebraska does hereby pledge to and agree with the holders of any obligations issued under the Nebraska Educational, Health, and Social Services Finance Authority Act and with those parties who may enter into contracts with the authority pursuant to the act that the state will not limit or alter the rights vested in the authority until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority, except that nothing contained in this

section shall preclude such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority.

**Source:** Laws 1981, LB 321, § 51; Laws 1993, LB 465, § 29; R.S.1943, (1994), § 79-2951; Laws 1995, LB 5, § 51; R.S.1943, (2008), § 85-1751; Laws 2013, LB170, § 54.

**58-855 Act; supplemental to other laws.**

The Nebraska Educational, Health, and Social Services Finance Authority Act shall be deemed to provide a complete, additional, and alternative method for doing the things authorized in the act and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under the act need not comply with the requirements of any other law applicable to the issuance of bonds, and the acquisition, construction, improvement, equipment, and renovation of a project pursuant to the act by the authority need not comply with the requirements of any competitive bidding law or other restriction imposed on the procedure for award of contracts for the acquisition, construction, improvement, equipment, and renovation of a project or the lease, sale, or disposition of property of the authority, except that if the prospective lessee so requests in writing, the authority shall call for construction bids in such manner as shall be determined by the authority with the approval of such lessee. Except as otherwise expressly provided in the act, none of the powers granted to the authority under the act shall be subject to the supervision of or regulation by or require the approval or consent of any municipality, political subdivision, commission, board, body, bureau, official, or agency or the state.

**Source:** Laws 1981, LB 321, § 52; Laws 1993, LB 465, § 30; R.S.1943, (1994), § 79-2952; Laws 1995, LB 5, § 52; R.S.1943, (2008), § 85-1752; Laws 2013, LB170, § 55.

**58-856 Act; provisions controlling.**

To the extent that the Nebraska Educational, Health, and Social Services Finance Authority Act is inconsistent with the provisions of any general statute or special act or parts thereof, the Nebraska Educational, Health, and Social Services Finance Authority Act shall be deemed controlling.

**Source:** Laws 1981, LB 321, § 53; Laws 1993, LB 465, § 31; R.S.1943, (1994), § 79-2953; Laws 1995, LB 5, § 53; R.S.1943, (2008), § 85-1753; Laws 2013, LB170, § 56.

**58-857 Nebraska Health Education Assistance Loan Program; established.**

There is hereby established, in accordance with Public Law 94-484, the Nebraska Health Education Assistance Loan Program, to be financed by the authority in the manner provided in the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1983, LB 159, § 7; Laws 1993, LB 465, § 32; R.S.1943, (1994), § 79-2954; Laws 1995, LB 5, § 54; R.S.1943, (2008), § 85-1754; Laws 2013, LB170, § 57.

**58-858 Nebraska Health Education Assistance Loan Program; authority; powers.**

The authority may:

- (1) Make loans;
- (2) Participate in the financing of loans;
- (3) Purchase or participate in the purchase of loans;
- (4) Sell or participate in the sale of loans;
- (5) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (4) of this section;
- (6) Do all things necessary and convenient to carry out the purposes of sections 58-857 to 58-862 in connection with the administering and servicing of loans, including contracting with any person, firm, or other body, public or private;
- (7) Enter into any agreements necessary to effect the guarantee, insuring, administering, or servicing of loans;
- (8) Adopt and promulgate rules and regulations governing and establish standards for participation in the program created by section 58-857, and establish other administrative procedures consistent with Public Law 94-484; and
- (9) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

**Source:** Laws 1983, LB 159, § 8; R.S.1943, (1994), § 79-2955; Laws 1995, LB 5, § 55; R.S.1943, (2008), § 85-1755; Laws 2013, LB170, § 58.

**58-859 Nebraska Health Education Assistance Loan Program; loans; how funded.**

Any loan made, purchased, or caused to be made or purchased pursuant to section 58-858 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to sections 58-857 to 58-862. The resolution or trust indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 58-843 as the authority shall deem appropriate and any other provisions, not in violation of law, as the authority shall deem reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans, to purchase loans, to cause loans to be made or purchased, to pay financing costs, including, but not limited to, legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

**Source:** Laws 1983, LB 159, § 9; R.S.1943, (1994), § 79-2956; Laws 1995, LB 5, § 56; R.S.1943, (2008), § 85-1756; Laws 2013, LB170, § 59.

**58-860 Nebraska Health Education Assistance Loan Program; bonds or other obligations; how paid.**

Notwithstanding section 58-841, all bonds, notes, or other obligations issued by the authority for the Nebraska Health Education Assistance Loan Program shall be payable out of the revenue generated in connection with loans funded under sections 58-857 to 58-862, or from reserves or other money available for such purpose as may be designated in the resolution of the authority under which the bonds, notes, or other obligations are issued or as may be designated in a trust indenture authorized by the authority.

**Source:** Laws 1983, LB 159, § 10; R.S.1943, (1994), § 79-2957; Laws 1995, LB 5, § 57; R.S.1943, (2008), § 85-1757; Laws 2013, LB170, § 60.

**58-861 Nebraska Health Education Assistance Loan Program; bonds; security.**

Notwithstanding section 58-843, the principal of and interest on any bonds issued by the authority for the Nebraska Health Education Assistance Loan Program shall be secured by a pledge of the revenue and other money out of which such principal and interest shall be made payable and may be secured by a trust indenture, mortgage, or deed of trust, including an assignment of a loan or contract right of the authority pursuant to a loan, covering all or any part of a loan from which the revenue or receipts so pledged may be derived.

**Source:** Laws 1983, LB 159, § 11; R.S.1943, (1994), § 79-2958; Laws 1995, LB 5, § 58; R.S.1943, (2008), § 85-1758; Laws 2013, LB170, § 61.

**58-862 Nebraska Health Education Loan Repayment Fund; created; use.**

There is hereby created a separate fund, to be known as the Nebraska Health Education Loan Repayment Fund, which shall consist of all revenue generated in connection with loans funded pursuant to the Nebraska Educational, Health, and Social Services Finance Authority Act. The authority may pledge revenue received or to be received by the fund to secure bonds, notes, or other obligations issued pursuant to the act. The authority may create such subfunds or accounts within the fund as it deems necessary or advisable.

**Source:** Laws 1983, LB 159, § 12; Laws 1993, LB 465, § 33; R.S.1943, (1994), § 79-2959; Laws 1995, LB 5, § 59; R.S.1943, (2008), § 85-1759; Laws 2013, LB170, § 62.

**58-863 Nebraska Student Loan Assistance Program; established.**

There is hereby established the Nebraska Student Loan Assistance Program to be financed by the authority in the manner provided in the Nebraska Educational, Health, and Social Services Finance Authority Act.

**Source:** Laws 1993, LB 465, § 34; R.S.1943, (1994), § 79-2961; Laws 1995, LB 5, § 60; R.S.1943, (2008), § 85-1760; Laws 2013, LB170, § 63.

**58-864 Nebraska Student Loan Assistance Program; authority; powers.**

The authority may:

(1) Make loans to private institutions of higher education to assist such institutions in providing loans to their full-time students to assist them in



financing the cost of their education while taking courses leading to an academic degree;

(2) Participate in the financing of such loans;

(3) Sell or participate in the sale of such loans;

(4) Collect and pay reasonable fees and charges in connection with the exercise of the powers provided in subdivisions (1) through (3) of this section;

(5) Do all things necessary and convenient to carry out the purposes of this section and section 58-865 in connection with the administering of such loans, including contracting with any person, firm, or other body, public or private;

(6) Enter into any agreements necessary to effect the guarantee, insuring, or administering of such loans;

(7) Adopt and promulgate rules and regulations governing and establish standards for participation in the Nebraska Student Loan Assistance Program; and

(8) Exercise all powers incidental to or necessary for the performance of the powers authorized by this section.

**Source:** Laws 1993, LB 465, § 35; R.S.1943, (1994), § 79-2962; Laws 1995, LB 5, § 61; R.S.1943, (2008), § 85-1761; Laws 2013, LB170, § 64.

#### **58-865 Nebraska Student Loan Assistance Program; loans; how funded.**

Any loan made or caused to be made or purchased pursuant to section 58-864 may be funded with the proceeds of bonds, notes, or other obligations of the authority issued pursuant to this section and sections 58-841, 58-846, 58-863, and 58-864. The resolution or trust indenture creating such bonds, notes, or other obligations may contain any of the provisions specified in section 58-843 as the authority deems appropriate and any other provisions, not in violation of law, as the authority deems reasonable and proper for the security of the holders of such bonds, notes, or other obligations.

The proceeds of any such bonds, notes, or other obligations may be used and applied by the authority to make loans to such institutions and cause loans to be made by the institutions to their qualified students, to pay financing costs, including legal, underwriting, investment banking, accounting, rating agency, printing, and other similar costs, to fund any reserve funds deemed necessary or advisable by the authority, to pay interest on such bonds, notes, or other obligations for any period deemed necessary or advisable by the authority, and to pay all other necessary and incidental costs and expenses.

**Source:** Laws 1993, LB 465, § 36; R.S.1943, (1994), § 79-2963; Laws 1995, LB 5, § 62; R.S.1943, (2008), § 85-1762; Laws 2013, LB170, § 65.

#### **58-866 Change in name; effect.**

(1) It is the intent of the Legislature that the changes made by Laws 1993, LB 465, in the name of the Nebraska Educational Facilities Authority Act to the Nebraska Educational Finance Authority Act and in the name of the Nebraska Educational Facilities Authority to the Nebraska Educational Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 9, 1993.

(2) It is the intent of the Legislature that the changes made by Laws 2013, LB170, in the name of the Nebraska Educational Finance Authority Act to the Nebraska Educational, Health, and Social Services Finance Authority Act and in the name of the Nebraska Educational Finance Authority to the Nebraska Educational, Health, and Social Services Finance Authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to September 6, 2013.

**Source:** Laws 1993, LB 465, § 37; R.S.1943, (1994), § 79-2964; Laws 1995, LB 5, § 63; R.S.1943, (2008), § 85-1763; Laws 2013, LB170, § 66.

## CHAPTER 59

# MONOPOLIES AND UNLAWFUL COMBINATIONS

Article.

15. Cigarette Sales.
  - (b) Grey Market Sales. 59-1520, 59-1523.
16. Consumer Protection Act. 59-1608.04 to 59-1614.
17. Seller-Assisted Marketing Plan. 59-1722, 59-1724.

### ARTICLE 15

#### CIGARETTE SALES

##### (b) GREY MARKET SALES

Section

- 59-1520. Prohibited acts.  
59-1523. Disciplinary actions; contraband.

##### (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 28-1429.03 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; Laws 2014, LB863, § 27.

## **ARTICLE 16**

### **CONSUMER PROTECTION ACT**

#### Section

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

59-1611. Demand to produce documentary materials for inspection; contents; service; unauthorized disclosure; return; modification; vacation; use; penalty.

59-1614. Civil penalties; Attorney General; duties.

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

(1) 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. Transfers from the State

Settlement Cash Fund may be made at the direction of the Legislature to the Nebraska Capital Construction Fund. 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.

(2) The State Treasurer shall transfer two million five hundred thousand dollars from the State Settlement Cash Fund to the Nebraska Capital Construction Fund on July 1, 2013, or as soon thereafter as administratively possible.

**Source:** Laws 2006, LB 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7; Laws 2011, LB549, § 8; Laws 2013, LB199, § 26.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **59-1611 Demand to produce documentary materials for inspection; contents; service; unauthorized disclosure; return; modification; vacation; use; penalty.**

(1) Whenever the Attorney General believes that any person may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of sections 59-1602 to 59-1606, the Attorney General may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying thereof. This section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material shall be produced; and

(d) Identify the members of the Attorney General's staff to whom such documentary material shall be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if such person has no place of business in this state, to his or her principal office or place of business.

(5) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a district court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the Attorney General, without the consent of the person who produced such material, except that:

(a) Under such reasonable terms and conditions as the Attorney General shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person;

(b) The Attorney General may provide copies of such documentary material to an official of this or any other state, or an official of the federal government, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if such official agrees in writing to not disclose such documentary material to any person other than the official's authorized employees, except as such disclosure is permitted under subdivision (c) of this subsection; and

(c) The Attorney General or any assistant attorney general or an official authorized to receive copies of documentary material under subdivision (b) of this subsection may use such copies of documentary material as he or she determines necessary in the enforcement of the Consumer Protection Act or any state or federal consumer protection laws that any state or federal official has authority to enforce, including presentation before any court, except that any such material which contains trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the district court for Lancaster County, or in such other county where the parties reside. A petition by the person on whom the demand is served, stating good cause, to require the Attorney General or any person to perform any duty



imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the district court for Lancaster County or in the county where the parties reside.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the district court of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order as may be required to carry into effect the provisions of this section. Disobedience of any order entered under this section by any court shall be punished as a contempt thereof.

**Source:** Laws 1974, LB 1028, § 18; Laws 2002, LB 1278, § 29; Laws 2016, LB835, § 22.

Operative date July 21, 2016.

#### **59-1614 Civil penalties; Attorney General; duties.**

Any person who violates section 59-1603 or 59-1604 or the terms of any injunction issued as provided in the Consumer Protection Act shall forfeit and pay a civil penalty of not more than five hundred thousand dollars.

Any person who violates section 59-1602 shall pay a civil penalty of not more than two thousand dollars for each violation, except that such penalty shall not apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium who publishes, prints, or distributes advertising in good faith without knowledge of its false, deceptive, or misleading character and no such good faith publication, printing, or distribution shall be considered a violation of section 59-1602.

For the purpose of this section, the district court which issues any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of sections 59-1603 and 59-1604, the Attorney General, acting in the name of the state, may seek recovery of such penalties in a civil action.

**Source:** Laws 1974, LB 1028, § 21; Laws 1980, LB 186, § 1; Laws 2002, LB 1278, § 30; Laws 2016, LB835, § 23.

Operative date July 21, 2016.

### **ARTICLE 17**

#### **SELLER-ASSISTED MARKETING PLAN**

Section

59-1722. Transaction; seller complied with Federal Trade Commission trade regulation rule; exempt; exception; conditions; fee.

## Section

59-1724. Marketing plan; seller; disclosure document; contents; list of sellers; file; update; fees.

**59-1722 Transaction; seller complied with Federal Trade Commission trade regulation rule; exempt; exception; conditions; fee.**

(1) Any transaction in which the seller has complied with the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. 436, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The seller uses a disclosure document prepared in accordance with either the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. 436, or the then current guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any representations in connection with such offer or sale to any prospective purchaser in Nebraska, the seller files a notice with the Department of Banking and Finance which contains (i) the name, address, and telephone number of the seller and the name under which the seller intends to do business and (ii) a brief description of the plan offered by the seller; and

(c) The seller pays a filing fee of one hundred dollars.

(2) The department may request a copy of the disclosure document upon receipt of a written complaint or inquiry regarding the seller or upon a reasonable belief that a violation of the Seller-Assisted Marketing Plan Act has occurred or may occur. The seller shall provide such copy within ten business days of receipt of the request.

(3) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The Director of Banking and Finance may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities if the director finds that such an order is in the public interest or is necessary for the protection of purchasers. An order shall not be entered without appropriate prior notice to all interested parties, an opportunity for hearing, and written findings of fact and conclusions of law. If the public interest or the protection of purchasers so requires, the director may by order summarily deny or revoke an exemption specified in this section pending final determination of any proceedings under this section. An order under this section shall not operate retroactively.

**Source:** Laws 1979, LB 180, § 22; Laws 1993, LB 218, § 9; Laws 2001, LB 53, § 108; Laws 2013, LB214, § 11.

**59-1724 Marketing plan; seller; disclosure document; contents; list of sellers; file; update; fees.**

(1)(a) Before placing any advertisement, making any other solicitation, making any sale, or making any representations to any prospective purchaser in Nebraska, the seller shall file with the Department of Banking and Finance a copy of a disclosure document prepared pursuant to sections 59-1733 to 59-1740 and pay a filing fee of one hundred dollars.

(b) The seller shall file an amended document with the department whenever a material change in the information occurs and shall pay a fee of fifty dollars for filing each such document.

(c) If the seller continues to solicit seller-assisted marketing plans in Nebraska, he or she shall annually file an updated disclosure document and pay a renewal fee of fifty dollars on or before the anniversary date of the initial filing for the particular seller-assisted marketing plan. In addition to the updated disclosure document, if a seller requires a purchaser to enter into a noncompete agreement in a side agreement or ancillary agreement, the seller shall include a disclosure of the existence of such side agreement or ancillary agreement in the updated disclosure document.

(d) In addition to the disclosure document, the seller shall file a list of the names and resident addresses of those individuals who sell the seller-assisted marketing plan on behalf of the seller. The list of sales representatives shall be updated through a new filing every six months. No fee shall be required to be paid for any filing which includes only an updated list of sales representatives.

(2) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

**Source:** Laws 1979, LB 180, § 24; Laws 1993, LB 218, § 10; Laws 2016, LB942, § 1.  
Effective date April 8, 2016.



## MOTOR VEHICLES

# CHAPTER 60

## MOTOR VEHICLES

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## MOTOR VEHICLES

### ARTICLE 1

#### MOTOR VEHICLE CERTIFICATE OF TITLE ACT

##### Section

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## Section

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**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; Laws 2015, LB231, § 2.

**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; Laws 2015, LB231, § 3.

**60-103 All-terrain vehicle, defined.**

All-terrain vehicle means any motorized off-highway device which (1) is fifty inches or less in width, (2) has a dry weight of twelve hundred pounds or less, (3) travels on three or more nonhighway tires, and (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

**Source:** Laws 2005, LB 276, § 3; Laws 2014, LB814, § 3.

**60-104.01 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) in which the operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top and is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and for each occupant a manufacturer-installed three-point safety belt system, (4) having antilock brakes, and (5) designed to be controlled with a steering wheel and pedals.

**Source:** Laws 2015, LB231, § 4.

**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.

**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.

**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, 2016.

**Source:** Laws 2007, LB286, § 5; Laws 2011, LB289, § 7; Laws 2016, LB929, § 1.

Effective date March 10, 2016.

**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.

**60-122 Moped, defined.**

Moped means a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 2005, LB 276, § 22; Laws 2015, LB95, § 3.

**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, (9) electric personal assistive mobility devices, and (10) bicycles as defined in section 60-611.

**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; Laws 2015, LB95, § 4.

**60-124 Motorcycle, defined.**

Motorcycle means any motor vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground. Motorcycle does not include an autocycle.

**Source:** Laws 2005, LB 276, § 24; Laws 2015, LB231, § 5.

**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 seventy-four inches in width or less, (b) is not more than one hundred eighty inches, including the bumper, in length, (c) has a dry weight of two thousand pounds or less, and (d) travels on four or more nonhighway tires.

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

**Source:** Laws 2010, LB650, § 7; Laws 2012, LB1155, § 6; Laws 2013, LB223, § 1; Laws 2014, LB814, § 4.

**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.

**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; contents; form.**

(1)(a)(i) 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.

(ii) This subdivision applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2020. In addition to the information required under subdivision (1)(a)(i) of this section, the application for a certificate of title shall contain (A) the full legal name as defined in section 60-468.01 of each owner and (B)(I) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (II) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(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; Laws 2015, LB642, § 3.

**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.

**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.

**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.

**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.

**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.

**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.



**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.

**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.

#### **60-155 Notation of lien; fees.**

(1) For each notation of a lien by a county, the fee shall be seven dollars. Two dollars 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. One dollar shall be remitted to the State Treasurer for credit to the General Fund.

(2) For each notation of a lien by the department, the fee shall be seven dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Three dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

**Source:** Laws 2005, LB 276, § 55; Laws 2013, LB30, § 1.

#### **60-156 Duplicate certificate of title; fees.**

(1) For each duplicate certificate of title issued by a county for a vehicle, the fee shall be fourteen dollars. Ten dollars 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.

(2) For each duplicate certificate of title issued by the department for a vehicle, the fee shall be fourteen dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Ten dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

**Source:** Laws 2005, LB 276, § 56; Laws 2013, LB30, § 2.

#### **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.

#### **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.

**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.

**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.

**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.

#### **60-165.01 Printed certificate of title; when issued.**

(1) A lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the vehicle relocates to another state or country or if requested for any other purpose approved by the department. Upon proof by the owner that a lienholder has not provided the requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

(2) If a nonresident applying for a certificate of title pursuant to subsection (4) of section 60-144 indicates on the application that the applicant will immediately surrender the certificate of title to the appropriate official in the applicant's state of residence in order to have a certificate of title issued by that state and the county treasurer finds that there is a lien or encumbrance on the vehicle, the county treasurer shall issue a printed certificate of title with all liens duly noted and deliver the certificate of title to the applicant.

**Source:** Laws 2009, LB202, § 17; Laws 2015, LB94, § 1.

#### **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.

**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.

**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.

**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.

**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.

**60-171 Salvage branded certificate of title; terms, defined.**

For purposes of sections 60-171 to 60-177:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model vehicle means a vehicle which has (a) a manufacturer's model year designation of, or later than, the year in which the vehicle was wrecked, damaged, or destroyed, or any of the six preceding years or (b)(i) in the case of vehicles other than all-terrain vehicles, utility-type vehicles, and minibikes, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter or (ii) in the case of all-terrain vehicles, utility-type vehicles, or minibikes, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a



retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(3) Manufacturer buyback means the designation of a vehicle with an alleged nonconformity when the vehicle (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(4) Previously salvaged means the designation of a rebuilt or reconstructed vehicle which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 60-146;

(5) Retail value means the actual cash value, fair market value, or retail value of a vehicle as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable vehicles with respect to condition and equipment; and

(6) Salvage means the designation of a vehicle which is:

(a) A late model vehicle which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the vehicle to its condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed;

(b) Voluntarily designated by the owner of the vehicle as a salvage vehicle by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the vehicle; or

(c) Flood damaged resulting from being submerged in water to the point that rising water has reached over the floorboard, has entered the passenger compartment, and has caused damage to any electrical, computerized, or mechanical components. Flood damaged specifically does not apply to a vehicle that an inspection, conducted by an insurance claim representative or a vehicle repairer, indicates:

(i) Has no electrical, computerized, or mechanical components damaged by water; or

(ii) Had one or more electrical, computerized, or mechanical components damaged by water and all such damaged components were repaired or replaced.

**Source:** Laws 2005, LB 276, § 71; Laws 2010, LB650, § 19; Laws 2014, LB446, § 1.

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

(1) 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.

(2) 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.

(3) An insurance company may apply to the department for a salvage branded certificate of title without obtaining a properly endorsed certificate of title from the owner or other evidence of ownership as prescribed by the department if it has been at least thirty days since the company obtained oral or written acceptance by the owner of an offer in an amount in settlement of a total loss. The insurance company shall submit an application form prescribed by the department for a salvage branded certificate of title accompanied by an affidavit from the insurance company that it has made at least two written attempts and has been unable to obtain the proper endorsed certificate of title from the owner following an oral or written acceptance by the owner of an offer of an amount in settlement of a total loss and evidence of settlement.

**Source:** Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19; Laws 2012, LB801, § 46; Laws 2014, LB701, § 1.

**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.

**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.

**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.

**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 sec-

tions 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.

**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.

**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.

**ARTICLE 3**

**MOTOR VEHICLE REGISTRATION**

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**60-301 Act, how cited.**



Sections 60-301 to 60-3,231 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; Laws 2014, LB383, § 1; Laws 2014, LB816, § 1; Laws 2015, LB220, § 1; Laws 2015, LB231, § 6; Laws 2016, LB474, § 3; Laws 2016, LB783, § 1; Laws 2016, LB977, § 5.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB474, section 3, with LB783, section 1, and LB977, section 5, to reflect all amendments.

**Note:** Changes made by LB474 became effective July 21, 2016. Changes made by LB977 became operative July 21, 2016. Changes made by LB783 became operative January 1, 2017.

### **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; Laws 2015, LB231, § 7; Laws 2016, LB783, § 2.

Operative date January 1, 2017.

#### **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.

#### **60-305 All-terrain vehicle, defined.**

All-terrain vehicle means any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of twelve hundred pounds or less, (3) travels on three or more nonhighway tires, and (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger. All-terrain vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

**Source:** Laws 2005, LB 274, § 5; Laws 2014, LB814, § 5.

#### **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.

**60-309.01 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) in which the operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top and is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and for each occupant a manufacturer-installed three-point safety belt system, (4) having antilock brakes, and (5) designed to be controlled with a steering wheel and pedals.

**Source:** Laws 2015, LB231, § 8.

**60-310 Automobile liability policy, defined.**

Automobile liability policy means liability insurance written by an insurance carrier duly authorized to do business in this state protecting other persons from damages for liability on account of accidents occurring subsequent to the effective date of the insurance arising out of the ownership of a motor vehicle (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to the 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 (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of other persons in any one accident. An automobile liability policy shall not exclude, limit, reduce, or otherwise alter liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured.

**Source:** Laws 2005, LB 274, § 10; Laws 2013, LB316, § 1.

**60-316 Commercial motor vehicle, defined.**

Commercial motor vehicle means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks or public power district motor vehicles.

**Source:** Laws 2005, LB 274, § 16; Laws 2016, LB783, § 3.

Operative date January 1, 2017.

**60-317 Commercial trailer, defined.**

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, utility trailers, or public power district trailers.

**Source:** Laws 2005, LB 274, § 17; Laws 2016, LB783, § 4.

Operative date January 1, 2017.

**60-320 Repealed. Laws 2012, LB 801, § 102.****60-323 Evidence of insurance, defined.**

Evidence of insurance means evidence of a current and effective automobile liability policy in paper or electronic format.

**Source:** Laws 2005, LB 274, § 23; Laws 2014, LB816, § 2.

**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.

**60-331.01 Handicapped or disabled parking permit, defined.**

Handicapped or disabled parking permit means a permit issued by the department that authorizes the use of parking spaces and access aisles that have been designated for the exclusive use of handicapped or disabled persons.

**Source:** Laws 2011, LB163, § 19; Laws 2014, LB657, § 3.

**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 more than two hundred feet without stopping or 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 individual who has permanently lost all or substantially all the use of one or more limbs.

**Source:** Laws 2011, LB163, § 20; Laws 2016, LB865, § 1.  
Effective date July 21, 2016.

**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, 2016.

**Source:** Laws 2007, LB286, § 26; Laws 2011, LB289, § 14; Laws 2014, LB776, § 1; Laws 2015, LB313, § 1; Laws 2016, LB929, § 2.  
Effective date March 10, 2016.

**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.

**60-338 Moped, defined.**

Moped means a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 2005, LB 274, § 38; Laws 2015, LB95, § 5.

**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, (9) electric personal assistive mobility devices, and (10) bicycles as defined in section 60-611.

**Source:** Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23; Laws 2011, LB289, § 15; Laws 2012, LB1155, § 10; Laws 2015, LB95, § 6.

**60-340 Motorcycle, defined.**

Motorcycle means any motor vehicle having a seat or saddle for use of the operator and designed to travel on not more than three wheels in contact with the ground. Motorcycle does not include an autocycle.

**Source:** Laws 2005, LB 274, § 40; Laws 2015, LB231, § 9.

**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.

**60-346.01 Public power district, defined.**

Public power district means a district as defined by section 70-601 receiving annual gross revenue of at least forty million dollars as determined by the Nebraska Power Review Board.

**Source:** Laws 2016, LB783, § 5.  
Operative date January 1, 2017.

**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 seventy-four inches in width or less, (b) is not more than one hundred eighty inches, including the bumper, in length, (c) has a dry weight of two thousand pounds or less, and (d) travels on four or more nonhighway tires. Utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the act.

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

**Source:** Laws 2010, LB650, § 24; Laws 2012, LB1155, § 11; Laws 2013, LB223, § 2; Laws 2014, LB814, § 6.

**60-363 Registration certificate; duty to carry, exception.**

(1) No person shall operate or park a motor vehicle on the highways unless such motor vehicle at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it.

(2) No person shall tow or park a trailer on the highways unless the registration certificate issued for the trailer or a copy thereof is carried in or upon the trailer or in or upon the motor vehicle that is towing or parking the trailer, subject to inspection by any peace officer, except fertilizer trailers as defined in section 60-326. The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner of the fertilizer trailer.

(3) In the case of a motorcycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.

**Source:** Laws 2005, LB 274, § 63; Laws 2010, LB725, § 1; Laws 2014, LB758, § 1.

**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.

**60-366 Nonresident owner; registration; when; reciprocity; avoidance of proper registration; Department of Motor Vehicles or Department of Revenue; powers; notice; determination; appeal; penalty; when.**

(1) Any nonresident owner who desires to register a motor vehicle or trailer in this state shall register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

(2) A nonresident owner, except as provided in subsections (3) and (4) of this section, owning any motor vehicle or trailer which has been properly registered in the state, country, or other place of which the owner is a resident, and which at all times, when operated or towed in this state, has displayed upon it the license plate or plates issued for such motor vehicle or trailer in the place of residence of such owner, may operate or permit the operation or tow or permit the towing of such motor vehicle or trailer within the state without registering such motor vehicle or trailer or paying any fees to this state.

(3)(a) Except as otherwise provided in subdivision (c) of this subsection, any nonresident owner gainfully employed or present in this state, operating a motor vehicle or towing a trailer in this state, shall register such motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

(b) Except as otherwise provided in subdivision (c) of this subsection, any nonresident owner who operates a motor vehicle or tows a trailer in this state for thirty or more continuous days shall register such motor vehicle or trailer in the same manner as a Nebraska resident unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.



(c) Any nonresident owner of a film vehicle may operate the film vehicle for up to one year without registering the vehicle in this state.

(4)(a) The Department of Motor Vehicles or the Department of Revenue may determine (i) that a limited liability company, partnership, corporation, or other business entity that is organized under the laws of another state or country and that owns or holds title to a recreational vehicle is a shell company used to avoid proper registration of the recreational vehicle in this state and (ii) that the recreational vehicle is controlled by a Nebraska resident.

(b) Factors that the Department of Motor Vehicles or the Department of Revenue may consider to determine that the limited liability company, partnership, corporation, or other business entity is a shell company used to avoid proper registration of the recreational vehicle in this state include, but are not limited to:

(i) The limited liability company, partnership, corporation, or other business entity lacks a business activity or purpose;

(ii) The limited liability company, partnership, corporation, or other business entity does not maintain a physical location in this state;

(iii) The limited liability company, partnership, corporation, or other business entity does not employ individual persons and provide those persons with Internal Revenue Service Form W-2 wage and tax statements; or

(iv) The limited liability company, partnership, corporation, or other business entity fails to file federal tax returns or fails to file a state tax return in this state.

(c) Factors that the Department of Motor Vehicles or the Department of Revenue may consider to determine that the recreational vehicle is controlled by a Nebraska resident include, but are not limited to:

(i) A Nebraska resident was the initial purchaser of the recreational vehicle;

(ii) A Nebraska resident operated or stored the recreational vehicle in this state for any period of time;

(iii) A Nebraska resident is a member, partner, or shareholder or is otherwise affiliated with the limited liability company, partnership, corporation, or other business entity purported to own the recreational vehicle; or

(iv) A Nebraska resident is insured to operate the recreational vehicle.

(d) If the Department of Motor Vehicles or the Department of Revenue makes the determinations described in subdivision (4)(a) of this section, there is a rebuttable presumption that:

(i) The Nebraska resident in control of the recreational vehicle is the actual owner of the recreational vehicle;

(ii) Such Nebraska resident is required to register the recreational vehicle in this state and is liable for all motor vehicle taxes, motor vehicle fees, and registration fees as provided in the Motor Vehicle Registration Act; and

(iii) The purchase of the recreational vehicle is subject to sales or use tax under section 77-2703.

(e) The Department of Motor Vehicles or the Department of Revenue shall notify the Nebraska resident who is presumed to be the owner of the recreational vehicle that he or she is required to register the recreational vehicle in this state, pay any applicable taxes and fees for proper registration of the recreational vehicle under the Motor Vehicle Registration Act, and pay any

applicable sales or use tax due on the purchase under the Nebraska Revenue Act of 1967 no later than thirty days after the date of the notice.

(f)(i) For a determination made by the Department of Motor Vehicles under this subsection, the Nebraska resident who is presumed to be the owner of the recreational vehicle may accept the determination and pay the county treasurer as shown in the notice, or he or she may dispute the determination and appeal the matter. Such appeal shall be filed with the Director of Motor Vehicles within thirty days after the date of the notice or the determination will be final. The director shall appoint a hearing officer who shall hear the appeal and issue a written decision. Such appeal shall be in accordance with the Administrative Procedure Act. Following a final determination in the appeal in favor of the Department of Motor Vehicles or if no further appeal is filed, the Nebraska resident shall owe the taxes and fees determined to be due, together with any costs for the appeal assessed against the owner.

(ii) For a determination made by the Department of Revenue under this subsection, the Nebraska resident who is presumed to be the owner of the recreational vehicle may appeal the determination made by the Department of Revenue, and such appeal shall be in accordance with section 77-2709.

(g) If the Nebraska resident who is presumed to be the owner of the recreational vehicle fails to pay the motor vehicle taxes, motor vehicle fees, registration fees, or sales or use tax required to be paid under this subsection, he or she shall be assessed a penalty of fifty percent of such unpaid taxes and fees. Such penalty shall be remitted by the county treasurer or the Department of Revenue to the State Treasurer for credit to the Highway Trust Fund.

**Source:** Laws 2005, LB 274, § 66; Laws 2014, LB851, § 4; Laws 2015, LB45, § 1.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

**Nebraska Revenue Act of 1967**, see section 77-2701.

#### **60-367 Nonresident; applicability of act.**

Except as otherwise provided in section 60-366, the provisions of the Motor Vehicle Registration Act relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident of this state, other than a foreign corporation doing business in this state, if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of motor vehicles or trailers and the display of registration numbers thereon and conspicuously displays his or her registration numbers as required thereby.

**Source:** Laws 2005, LB 274, § 67; Laws 2014, LB851, § 5.

#### **60-370 County number system; alphanumeric system.**

(1) Except as provided in subsection (3) of this section:

(a) In counties having a population of one hundred thousand inhabitants or more according to the most recent federal decennial census, registration of motor vehicles or trailers shall be by the alphanumeric system; and

(b) In all other counties, registration of motor vehicles or trailers shall be, at the option of each county board, by either the alphanumeric system or the county number system.

(2) Counties using the county number system shall show on motor vehicles or trailers licensed therein a county number on the license plate preceding a dash which shall then be followed by the registration number assigned to the motor vehicle or trailer. The county numbers assigned to the counties in Nebraska shall be as follows:

No.	Name of County	No.	Name of County
1	Douglas	2	Lancaster
3	Gage	4	Custer
5	Dodge	6	Saunders
7	Madison	8	Hall
9	Buffalo	10	Platte
11	Otoe	12	Knox
13	Cedar	14	Adams
15	Lincoln	16	Seward
17	York	18	Dawson
19	Richardson	20	Cass
21	Scotts Bluff	22	Saline
23	Boone	24	Cuming
25	Butler	26	Antelope
27	Wayne	28	Hamilton
29	Washington	30	Clay
31	Burt	32	Thayer
33	Jefferson	34	Fillmore
35	Dixon	36	Holt
37	Phelps	38	Furnas
39	Cheyenne	40	Pierce
41	Polk	42	Nuckolls
43	Colfax	44	Nemaha
45	Webster	46	Merrick
47	Valley	48	Red Willow
49	Howard	50	Franklin
51	Harlan	52	Kearney
53	Stanton	54	Pawnee
55	Thurston	56	Sherman
57	Johnson	58	Nance
59	Sarpy	60	Frontier
61	Sheridan	62	Greeley
63	Boyd	64	Morrill
65	Box Butte	66	Cherry
67	Hitchcock	68	Keith
69	Dawes	70	Dakota
71	Kimball	72	Chase
73	Gosper	74	Perkins
75	Brown	76	Dundy
77	Garden	78	Deuel
79	Hayes	80	Sioux
81	Rock	82	Keya Paha
83	Garfield	84	Wheeler
85	Banner	86	Blaine
87	Logan	88	Loup
89	Thomas	90	McPherson

No.	Name of County	No.	Name of County
91	Arthur	92	Grant
93	Hooker		

(3) Counties using the alphanumeric system shall show on the license plates of motor vehicles or trailers licensed therein a combination of three letters followed by a combination of three numerals. The department may adopt and promulgate rules and regulations creating alphanumeric distinctions on the license plates based upon the registration of the motor vehicle or trailer and designating plate types that shall display county numbers on a statewide basis, taking into consideration cost, the need for uniformity, factors applicable to the production, distribution, and use of specific plate types, and any other factors consistent with the purposes of the Motor Vehicle Registration Act that the director deems relevant.

**Source:** Laws 2005, LB 274, § 70; Laws 2016, LB811, § 1.  
Operative date January 1, 2017.

**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.

**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.

**60-376 Operation of vehicle without registration; In Transit sticker; records required; proof of ownership.**

Subject to all the provisions of law relating to motor vehicles and trailers not inconsistent with this section, any motor vehicle dealer or trailer dealer who is regularly engaged within this state in the business of buying and selling motor vehicles and trailers, who regularly maintains within this state an established place of business, and who desires to effect delivery of any motor vehicle or trailer bought or sold by him or her from the point where purchased or sold to points within or outside this state may, solely for the purpose of such delivery by himself or herself, his or her agent, or a bona fide purchaser, operate such motor vehicle or tow such trailer on the highways of this state without charge or registration of such motor vehicle or trailer. A sticker shall be displayed on the front and rear windows or the rear side windows of such motor vehicle, except an autocycle or a motorcycle, and displayed on the front and rear of each such trailer. On the sticker shall be plainly printed in black letters the words In Transit. One In Transit sticker shall be displayed on an autocycle or a

motorcycle, which sticker may be one-half the size required for other motor vehicles. Such stickers shall include a registration number, which registration number shall be different for each sticker or pair of stickers issued, and the contents of such sticker and the numbering system shall be as prescribed by the department. Each dealer issuing such stickers shall keep a record of the registration number of each sticker or pair of stickers on the invoice of such sale. Such sticker shall allow such owner to operate the motor vehicle or tow such trailer for a period of thirty days in order to effect proper registration of the new or used motor vehicle or trailer. When any person, firm, or corporation has had a motor vehicle or trailer previously registered and license plates assigned to such person, firm, or corporation, such owner may operate the motor vehicle or tow such trailer for a period of thirty days in order to effect transfer of plates to the new or used motor vehicle or trailer. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a duly executed bill of sale therefor or other satisfactory evidence of the right of possession by such person of such motor vehicle or trailer.

**Source:** Laws 2005, LB 274, § 76; Laws 2008, LB756, § 12; Laws 2015, LB231, § 10.

**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.

**60-383 Repealed. Laws 2015, LB 45, § 4.**

**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.

**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.

**60-386 Application; contents.**

(1) 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, the United States Department of Transportation number if required by 49 C.F.R. 390.5 and 390.19, as such regulations existed on January 1, 2016, 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 application shall also contain a notification that bulk fuel purchasers may be subject to federal excise tax liability. The department shall include such notification in the notices required by section 60-3,186.

(2) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2020. In addition to the information required under subsection (1) of this section, the application for registration shall contain (a) the full legal name as defined in section 60-468.01 of each owner and (b)(i) the motor vehicle operator's license number or state identification card number of



each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

**Source:** Laws 2005, LB 274, § 86; Laws 2011, LB289, § 17; Laws 2012, LB801, § 58; Laws 2013, LB207, § 1; Laws 2015, LB642, § 4; Laws 2016, LB929, § 3.  
Effective date March 10, 2016.

**60-387.01 Evidence of insurance; display as electronic image.**

Evidence of insurance may be displayed as an electronic image on an electronic device. If a person displays evidence of insurance on an electronic device, the person is not consenting for law enforcement to access other contents of the device. Whenever a person presents an electronic device for purposes of evidence of insurance, the person presenting the electronic device assumes liability for any damage to the device.

**Source:** Laws 2014, LB816, § 3.

**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.

**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.

**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, 60-3,122.04, 60-3,128, 60-3,224, and 60-3,227. 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; Laws 2014, LB383, § 2; Laws 2015, LB220, § 2; Laws 2016, LB474, § 4.  
Effective date July 21, 2016.

**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, 60-3,122.04, 60-3,128, 60-3,224, and 60-3,227, 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; Laws 2014, LB383, § 3; Laws 2015, LB220, § 3; Laws 2016, LB474, § 5.  
Effective date July 21, 2016.

### **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, 60-3,122.04, 60-3,128, 60-3,224, and 60-3,227. 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 registra-

tion 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; Laws 2014, LB383, § 4; Laws 2015, LB220, § 4; Laws 2016, LB474, § 6.  
Effective date July 21, 2016.

**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.

**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.

**60-3,100 License plates; issuance; license decal; display; additional registration fee.**

(1) The department shall issue to every person whose motor vehicle or trailer is registered one or two 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. 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. Autocycle, 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)(a) Except as otherwise provided in this subsection, two license plates shall be issued for every motor vehicle.

(b) One license plate shall be issued for (i) apportionable vehicles, (ii) buses, (iii) dealers, (iv) minitrucks, (v) motorcycles, (vi) special interest motor vehicles that use the special interest motor vehicle license plate authorized by and issued under section 60-3,135.01, (vii) trailers, and (viii) truck-tractors.

(c)(i) Beginning January 1, 2017, one license plate shall be issued, upon request and compliance with this subdivision, for any passenger car which is not manufactured to be equipped with a bracket on the front of the vehicle to display a license plate. A license decal shall be issued with the license plate as provided in subdivision (ii) of this subdivision and shall be displayed on the driver's side of the windshield. In order to request a single license plate and license decal, there shall be an additional annual nonrefundable registration fee of one hundred dollars plus the cost of the decal paid to the county treasurer at the time of registration. All fees collected under this subdivision shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(ii) The department shall design, procure, and furnish to the county treasurers a license decal which shall be displayed as evidence that a license plate has been obtained under this subdivision. Each county treasurer shall furnish a license decal to the person obtaining the plate.

(d) 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; Laws 2015, LB231, § 11; Laws 2016, LB53, § 1.  
Effective date July 21, 2016.

**60-3,101 License plates; when issued; validation decals.**

Except for license plates issued pursuant to sections 60-3,203 and 60-3,228, license plates shall be issued every six years beginning with the license plates issued in the year 2005. Except for plates issued pursuant to such sections, in the years in which plates are not issued, in lieu of issuing such license plates, the department shall furnish to every person whose motor vehicle or trailer is registered one or two validation decals, as the case may be, which validation decals shall bear the year for which issued and be so constructed as to permit them to be permanently affixed to the plates.

**Source:** Laws 2005, LB 274, § 101; Laws 2016, LB783, § 6.  
Operative date January 1, 2017.

**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) Autocycle license plates issued pursuant to section 60-3,100;
- (4) Boat dealer license plates issued pursuant to section 60-379;
- (5) Breast Cancer Awareness Plates issued pursuant to sections 60-3,230 and 60-3,231;
- (6) Bus license plates issued pursuant to section 60-3,144;
- (7) Commercial motor vehicle license plates issued pursuant to section 60-3,147;
- (8) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;
- (9) Disabled veteran license plates issued pursuant to section 60-3,124;
- (10) Farm trailer license plates issued pursuant to section 60-3,151;
- (11) Farm truck license plates issued pursuant to section 60-3,146;
- (12) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;
- (13) Fertilizer trailer license plates issued pursuant to section 60-3,151;
- (14) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;
- (15) Handicapped or disabled person license plates issued pursuant to section 60-3,113;
- (16) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;
- (17) Local truck license plates issued pursuant to section 60-3,145;



- (18) Military Honor Plates issued pursuant to sections 60-3,122.03 and 60-3,122.04;
- (19) Minitruck license plates issued pursuant to section 60-3,100;
- (20) 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;
- (21) Motor vehicles exempt pursuant to section 60-3,107;
- (22) Motorcycle license plates issued pursuant to section 60-3,100;
- (23) Mountain Lion Conservation Plates issued pursuant to sections 60-3,226 and 60-3,227;
- (24) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;
- (25) Nebraska 150 Sesquicentennial Plates issued pursuant to sections 60-3,223 to 60-3,225;
- (26) Nonresident owner thirty-day license plates issued pursuant to section 60-382;
- (27) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143 other than autocycles;
- (28) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143 other than autocycles;
- (29) Pearl Harbor license plates issued pursuant to section 60-3,122;
- (30) Personal-use dealer license plates issued pursuant to section 60-3,116;
- (31) 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;
- (32) Prisoner-of-war license plates issued pursuant to section 60-3,123;
- (33) Public power district license plates issued pursuant to section 60-3,228;
- (34) Purple Heart license plates issued pursuant to section 60-3,125;
- (35) Recreational vehicle license plates issued pursuant to section 60-3,151;
- (36) Repossession license plates issued pursuant to section 60-375;
- (37) Special interest motor vehicle license plates issued pursuant to section 60-3,135.01;
- (38) Specialty license plates issued pursuant to sections 60-3,104.01 and 60-3,104.02;
- (39) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;
- (40) Trailer license plates issued pursuant to section 60-3,100;
- (41) Trailer license plates issued for trailers owned or operated by a public power district pursuant to section 60-3,228;
- (42) Trailers exempt pursuant to section 60-3,108;
- (43) Transporter license plates issued pursuant to section 60-378;
- (44) 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 contrac-

tors for soil and water conservation construction license plates issued pursuant to section 60-3,149;

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

(46) 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; Laws 2014, LB383, § 5; Laws 2015, LB45, § 2; Laws 2015, LB220, § 5; Laws 2015, LB231, § 12; Laws 2016, LB474, § 7; Laws 2016, LB783, § 7; Laws 2016, LB977, § 6.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB474, section 7, with LB783, section 7, and LB977, section 6, to reflect all amendments.

**Note:** Changes made by LB474 became effective July 21, 2016. Changes made by LB977 became operative July 21, 2016. Changes made by LB783 became operative January 1, 2017.

### **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.

**60-3,104.02 Specialty license plates; organization; requirements; design of plates.**

(1) The department shall issue specialty license plates for any organization which certifies that it meets the requirements of this section. The department shall work with the organization to design the plates.

(2) The department shall make applications available pursuant to section 60-3,104.01 for each type of specialty license plate when it is designed. The department shall not manufacture specialty license plates for an organization until the department has received two hundred fifty prepaid applications for specialty license plates designed for that organization. The department may revoke the approval for an organization's specialty license plate if the total number of registered vehicles that obtained such plate is less than two hundred fifty within three years after receiving approval.

(3) In order to have specialty license plates designed and manufactured, an organization shall furnish the department with the following:

(a) A copy of its articles of incorporation and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(b) A copy of its charter or bylaws and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(c) Any Internal Revenue Service rulings of the organization's nonprofit tax-exempt status and, if the organization consists of a group of nonprofit corporations, a copy for each organization;

(d) A copy of a certificate of existence on file with the Secretary of State under the Nebraska Nonprofit Corporation Act;

(e) Two hundred fifty prepaid applications for the specialty license plates; and

(f) A completed application for the issuance of the plates on a form provided by the department certifying that the organization meets the following requirements:

(i) The organization is a nonprofit corporation or a group of nonprofit corporations with a common purpose;

(ii) The primary activity or purpose of the organization serves the community, contributes to the welfare of others, and is not offensive or discriminatory in its purpose, nature, activity, or name;

(iii) The name and purpose of the organization does not promote any specific product or brand name that is on a product provided for sale;

(iv) The organization is authorized to use any name, logo, or graphic design suggested for the design of the plates;

(v) No infringement or violation of any property right will result from such use of such name, logo, or graphic design; and

(vi) The organization will hold harmless the State of Nebraska and its employees and agents for any liability which may result from any infringement

or violation of a property right based on the use of such name, logo, or graphic design.

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

**Source:** Laws 2009, LB110, § 4; Laws 2016, LB977, § 7.  
Operative date July 21, 2016.

**Cross References**

Nebraska Nonprofit Corporation Act, see section 21-1901.

**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.

**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.

**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.

**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 autocycle or 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, autocycle, 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 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; Laws 2014, LB657, § 4; Laws 2015, LB231, § 13.

**60-3,113.01 Handicapped or disabled person; parking permits; electronic system; department; duties.**

The department shall develop, implement, and maintain an electronic system for accepting and processing applications for handicapped or disabled parking permits.

**Source:** Laws 2011, LB163, § 23; Laws 2014, LB657, § 5.

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

(1) 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 (2) of this section or his or her designee.

(2) 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 recommend that the permit for the temporarily handicapped or disabled person be issued for either a three-month period or a six-month period, with such recommendation to be based on the estimated date of recovery.

(3) 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.

(4) 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; Laws 2013, LB31, § 1; Laws 2014, LB657, § 6.

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

(1) 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.

(2) 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.

(3) 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.

(4) 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; Laws 2014, LB657, § 7.

**60-3,113.04 Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.**

(1) 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 23 C.F.R. part 1235, UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES, as such regulations existed on January 1, 2016.

(2) 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.

(3) 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; Laws 2013, LB35, § 1; Laws 2014, LB657, § 8; Laws 2014, LB776, § 2; Laws 2015, LB313, § 2; Laws 2016, LB929, § 4.  
Effective date March 10, 2016.

**60-3,113.05 Handicapped or disabled persons; parking permit; expiration date; permit for temporarily handicapped or disabled person; period valid; renewal.**

(1) Permanently issued handicapped or disabled parking permits 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.

(2) All handicapped or disabled parking permits for temporarily handicapped or disabled persons shall be issued for a period ending either three months after the date of issuance or six months after the date of issuance, with such period to be based on the estimated date of recovery, but such permit may be renewed one time for a similar three-month or six-month period. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

**Source:** Laws 2011, LB163, § 27; Laws 2013, LB31, § 2; Laws 2014, LB657, § 9; Laws 2016, LB865, § 2.  
Effective date July 21, 2016.

**60-3,113.06 Handicapped or disabled persons; parking permit; use; display; prohibited acts; violation; penalty.**

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 section 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; Laws 2014, LB657, § 10.

**60-3,113.07 Handicapped or disabled persons; parking permit; prohibited acts; violation; penalty; powers of director.**

(1) 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.

(2) 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; Laws 2014, LB657, § 11.

**60-3,113.08 Handicapped or disabled persons; parking permit; rules and regulations.**

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 relating to the issuance and use of handicapped or disabled parking permits adopted and promulgated prior to July 18, 2014, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

**Source:** Laws 2011, LB163, § 30; Laws 2014, LB657, § 12.

**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.

**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.

**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.

**Cross References**

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

**60-3,118 Personalized message license plates; conditions.**

(1) In lieu of the license plates provided for by section 60-3,100, the department shall issue personalized message license plates for motor vehicles, trailers, semitrailers, or cabin trailers, except for motor vehicles and trailers registered under section 60-3,198, to all applicants who meet the requirements of sections 60-3,119 to 60-3,121. Personalized message license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters

may be used, except that for an autocycle or a motorcycle, a maximum of six characters may be used.

(2) The following conditions apply to all personalized message license plates:

(a) County prefixes shall not be allowed except in counties using the alphanumeric system for motor vehicle registration. The numerals in the county prefix shall be the numerals assigned to the county, pursuant to subsection (2) of section 60-370, in which the motor vehicle or cabin trailer is registered. Renewal of a personalized message license plate containing a county prefix shall be conditioned upon the motor vehicle or cabin trailer being registered in such county. The numerals in the county prefix, including the hyphen or any other unique design for an existing license plate style, count against the maximum number of characters allowed under this section;

(b) The characters in the order used shall not conflict with or duplicate any number used or to be used on the regular license plates or any number or license plate already approved pursuant to sections 60-3,118 to 60-3,121;

(c) The characters in the order used shall not express, connote, or imply any obscene or objectionable words or abbreviations; and

(d) An applicant receiving a personalized message license plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to such license plate.

(3) The department shall have sole authority to determine if the conditions prescribed in subsection (2) of this section have been met.

**Source:** Laws 2005, LB 274, § 118; Laws 2007, LB286, § 39; Laws 2015, LB231, § 14.

#### **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.

#### **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.

**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.

**60-3,122 Pearl Harbor plates.**

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that he or she is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Was discharged or otherwise separated with a characterization of honorable from the United States Armed Forces; and

(d) Holds a current membership in a Nebraska Chapter of the Pearl Harbor Survivors Association.

(2) The license plates shall be issued upon the applicant paying the regular license fee and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

**Source:** Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40; Laws 2009, LB110, § 6; Laws 2010, LB705, § 1; Laws 2015, LB642, § 5.

**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.

### **60-3,122.03 Military Honor Plates.**

(1) The department shall design license plates to be known as Military Honor Plates. The department shall create designs honoring persons who have served or are serving in the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, or National Guard. There shall be six designs, one for each of such armed forces reflecting its official emblem, official seal, or other official image. The issuance of plates for each of such armed forces shall be conditioned on the approval of the armed forces owning the copyright to the official emblem, official seal, or other official image. A person may qualify for a Military Honor Plate by registering with the Department of Veterans' Affairs pursuant to section 80-414. The Department of Motor Vehicles shall verify the applicant's eligibility for a plate created pursuant to this section by consulting the registry established by the Department of Veterans' Affairs.

(2) The design shall be selected on the basis of limiting 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 of Motor Vehicles shall make applications available for each type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.04.

(3) One type of Military Honor Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(4) One type of Military Honor Plates 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, except that a maximum of five characters may be used.

**Source:** Laws 2014, LB383, § 9.

### **60-3,122.04 Military Honor Plates; fee; eligibility; transfer.**

(1) Beginning January 2, 2016, an eligible person may apply to the department for Military Honor 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 Military Honor 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 verification by the department of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. To be eligible an applicant shall be (a) active duty armed forces personnel

serving in any of the armed forces listed in subsection (1) of section 60-3,122.03 or (b) a veteran of any of such armed forces who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions). Any person using Military Honor Plates shall surrender the plates to the county treasurer if such person is no longer eligible for the plates. Regular plates shall be issued to any such person upon surrender of the Military Honor Plates for a three-dollar transfer fee and forfeiture of any of the remaining annual fee. The three-dollar transfer fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of alphanumeric Military Honor Plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Military Honor Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees 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 of Motor Vehicles receives an application for Military Honor 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 Military Honor 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 Military Honor Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The owner of a motor vehicle or cabin trailer bearing Military Honor 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 Military Honor 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 Military Honor 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.

(6) If the director discovers evidence of fraud in an application for Military Honor Plates or that the holder is no longer eligible to have Military Honor Plates, the director may summarily cancel the plates and registration and send notice of the cancellation to the holder of the license plates.

**Source:** Laws 2014, LB383, § 10.

**60-3,123 Prisoner of war plates; fee.**

(1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) The license plates shall be issued upon the applicant paying the regular license fee and furnishing proof satisfactory to the department that the applicant was formerly a prisoner of war. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

**Source:** Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41; Laws 2009, LB110, § 8; Laws 2010, LB705, § 2; Laws 2014, LB383, § 6.

**60-3,124 Disabled veteran plates.**

(1) Any person who is a veteran of the United States Armed Forces, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who is classified by the United States Department of Veterans Affairs as one hundred percent service-connected disabled may, in addition to the application required in section 60-385, apply to the Department of Motor Vehicles for license plates designed by the department to indicate that the applicant is a disabled veteran. The inscription on the license plates shall be D.A.V. immediately below the license plate number to indicate that the holder of the license plates is a disabled veteran.

(2) The plates shall be issued upon the applicant paying the regular license fee and furnishing proof satisfactory to the department that the applicant is a disabled veteran. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates as provided in section 60-3,157.

**Source:** Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42; Laws 2009, LB110, § 9; Laws 2010, LB705, § 3; Laws 2015, LB642, § 6.

**60-3,125 Purple Heart plates; fee.**

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to

indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) The license plates shall be issued upon payment of the regular license fee and furnishing proof satisfactory to the department that the applicant was awarded the Purple Heart. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

**Source:** Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43; Laws 2009, LB110, § 10; Laws 2014, LB383, § 7.

**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.

**60-3,130.04 Historical vehicle; model-year license plates; authorized.**

(1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, handicapped or disabled person license plates, specialty license plates, special interest motor vehicle license plates, Military Honor Plates, Nebraska 150 Sesquicentennial Plates, Breast Cancer Awareness Plates, or Mountain Lion Conservation Plates.

**Source:** Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46; Laws 2009, LB110, § 13; Laws 2013, LB32, § 1; Laws 2014, LB383, § 8; Laws 2015, LB220, § 6; Laws 2016, LB474, § 8; Laws 2016, LB977, § 8.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB474, section 8, with LB977, section 8, to reflect all amendments.

**Note:** Changes made by LB474 became effective July 21, 2016. Changes made by LB977 became operative July 21, 2016.

**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 that no motor vehicle registered under section 60-3,198, autocycle, motorcycle, or trailer shall be eligible for special interest motor vehicle license plates. 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; Laws 2015, LB231, § 15.

**60-3,136 Motor vehicle insurance data base; created; powers and duties; Motor Vehicle Insurance Data Base Task Force; created.**

(1)(a) The motor vehicle insurance data base is created. The department shall develop and administer the motor vehicle insurance data base which shall include the information provided by insurance companies as required by the department pursuant to sections 60-3,136 to 60-3,139. The motor vehicle insurance data base shall be used to facilitate registration of motor vehicles in this state by the department and its agents. The director may contract with a designated agent for the purpose of establishing and operating the motor vehicle insurance data base and monitoring compliance with the financial responsibility requirements of such sections.

(b) The department may adopt and promulgate rules and regulations to carry out sections 60-3,136 to 60-3,139. The rules and regulations shall include specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base, and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base, as recommended by the Motor Vehicle Insurance Data Base Task Force created in subsection (2) of this section in its report to the department.

(2)(a) The Motor Vehicle Insurance Data Base Task Force is created. The Motor Vehicle Insurance Data Base Task Force shall investigate the best practices of the industry and recommend specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base.

(b) The Motor Vehicle Insurance Data Base Task Force shall consist of:

(i) The Director of Motor Vehicles or his or her designee;

(ii) The Director of Insurance or his or her designee;

(iii) The following members who shall be selected by the Director of Insurance:

(A) One representative of a domestic automobile insurance company or domestic automobile insurance companies;

(B) One representative of an admitted foreign automobile insurance company or admitted foreign automobile insurance companies; and

(C) One representative of insurance producers licensed under the laws of this state; and

(iv) Four members to be selected by the Director of Motor Vehicles.

(c) The requirements of this subsection shall expire on July 1, 2004, except that the director may reconvene the task force at any time thereafter if he or she deems it necessary.

**Source:** Laws 2005, LB 274, § 136; Laws 2016, LB666, § 1.  
Effective date July 21, 2016.

**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.

**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 one dollar and fifty cents for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and four dollars and fifty cents for each registration of a motor vehicle or trailer of a nonresident. The county treasurer shall credit such additional 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.

(4) If a registrant requests delivery of license plates, registration certificates, or validation decals by mail, the county treasurer may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant.

**Source:** Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47; Laws 2012, LB801, § 78; Laws 2013, LB207, § 2.

**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.

**60-3,143 Autocycle; passenger motor vehicle; leased motor vehicle; registration fee.**

(1) For autocycles, the registration fee shall be fifteen dollars.

(2) For every motor vehicle of ten-passenger capacity or less and not used for hire, the registration fee shall be fifteen dollars.

(3) For each motor vehicle having a seating capacity of ten persons or less and used for hire, the registration fee shall be six dollars plus an additional four dollars for every person such motor vehicle is equipped to carry in addition to the driver.

(4) For motor vehicles leased for hire when no driver or chauffeur is furnished by the lessor as part of the consideration paid for by the lessee, incident to the operation of the leased motor vehicle, the fee shall be fifteen dollars.

**Source:** Laws 2005, LB 274, § 143; Laws 2015, LB231, § 16.

**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.

**60-3,147 Commercial motor vehicles; public power district motor vehicles; registration fees.**

(1) The registration fee on commercial motor vehicles and public power district 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 and public power district 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 or public power district 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 and public power district 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 or public power district 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 or public power district 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 or public power district 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) Except as provided in section 60-3,228, 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; Laws 2016, LB783, § 8.  
Operative date January 1, 2017.

**60-3,148 Commercial motor vehicle; public power district motor vehicle; increase of gross vehicle weight; where allowed.**

No owner of a commercial motor vehicle or public power district motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle or public power district motor vehicle is registered except at the office of the county treasurer in the county where such commercial motor vehicle or public power district 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 or the public power district motor vehicle is more than one hundred miles from its



base location, 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; Laws 2016, LB783, § 9.

Operative date January 1, 2017.

**60-3,151 Trailers; recreational vehicles; registration fee.**

(1) For the registration of any commercial trailer or semitrailer, the fee shall be one dollar.

(2) The fee for utility trailers shall be one dollar for each one thousand pounds gross vehicle weight or fraction thereof, up to and including nine thousand pounds. Except as provided in section 60-3,228, utility trailer license plates shall display, in addition to the registration number, the letter X. Trailers other than farm trailers or trailers registered under section 60-3,228 of more than nine thousand pounds must be registered as commercial trailers.

(3) The fee for cabin trailers having gross vehicle weight of one thousand pounds or less shall be nine dollars and more than one thousand pounds, but less than two thousand pounds, shall be twelve dollars. Cabin trailers having a gross vehicle weight of two thousand pounds or more shall be registered for a fee of fifteen dollars.

(4) Recreational vehicles having a gross vehicle weight of eight thousand pounds or less shall be registered for a fee of eighteen dollars, those having a gross vehicle weight of more than eight thousand pounds but less than twelve thousand pounds shall be registered for thirty dollars, and those having a gross vehicle weight of twelve thousand pounds or over shall be registered for forty-two dollars. When living quarters are added to a registered truck, a recreational vehicle registration may be obtained without surrender of the truck registration, in which event both the truck and recreational vehicle license plates shall be displayed on the vehicle. Recreational vehicle license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(5) Farm trailers shall be licensed for a fee of one dollar, except that when a farm trailer is used with a registered farm truck, such farm trailer may, at the option of the owner, be registered as a separate unit for a fee of three dollars per ton gross vehicle weight and, if so registered, shall not be considered a truck and trailer combination for purposes of sections 60-3,145 and 60-3,146. Farm trailer license plates shall display, in addition to the registration number, the letter X.

(6) Fertilizer trailers shall be registered for a fee of one dollar. Fertilizer trailer license plates shall display, in addition to the registration number, the letter X.

(7) Trailers used to haul poles and cable reels owned and operated exclusively by public utility companies or trailers used by public power districts and registered pursuant to section 60-3,228 shall be licensed at a fee based on two dollars for each one-thousand-pound load to be hauled or any fraction thereof, and such load shall not exceed sixteen thousand pounds.

**Source:** Laws 2005, LB 274, § 151; Laws 2016, LB783, § 10.

Operative date January 1, 2017.

**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) Two dollars for each certificate issued and shall remit two dollars 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; Laws 2013, LB207, § 3.

**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.

**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.

**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.

**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.

**Cross References**

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

**60-3,163 Repealed. Laws 2012, LB 751, § 57.**

**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.

**60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.**

(1) The department shall annually determine the motor vehicle tax on each motor vehicle registered pursuant to section 60-3,187 and shall cause a notice of the amount to be delivered to the registrant. The notice may be delivered to the registrant at the address shown upon his or her registration certificate or the registrant's most recent address according to information received by the department from the National Change of Address program of the United States Postal Service or delivered electronically to the registrant if the registrant has provided electronic contact information to the department. The notice shall be provided 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 incurred by the county treasurer, and after transferring one percent of the motor vehicle tax proceeds collected to the State Treasurer for credit to the Vehicle Title and Registration System Replacement and Maintenance Cash Fund, 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; Laws 2013, LB207, § 4; Laws 2016, LB977, § 11.  
Operative date July 1, 2016.

**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, autocycles, 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

**MOTOR VEHICLES**

Value when new	Base tax
\$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; Laws 2015, LB231, § 17.

**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.

**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 department shall annually determine the motor vehicle fee on each motor vehicle registered pursuant to this section and shall cause a notice of the amount to be delivered to the registrant. The notice shall be combined with the notice of the motor vehicle tax required by section 60-3,186.

(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
- (k) Autocycles — \$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; Laws 2013, LB207, § 5; Laws 2015, LB231, § 18.

#### 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, 2016.

**Source:** Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2; Laws 2011, LB212, § 3; Laws 2012, LB751, § 14; Laws 2013, LB35, § 2; Laws 2014, LB776, § 3; Laws 2015, LB313, § 3; Laws 2016, LB929, § 5.  
Effective date March 10, 2016.

**60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; propor-**

**tional 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 juris-

dition 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. A trip permit shall be issued before any person required to obtain a trip permit enters this state with such vehicle. The trip permit shall be issued by the director through Internet sales from the department's web site. The trip permit shall be valid for a period of seventy-two hours. The fee for the trip permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5; Laws 2012, LB751, § 15; Laws 2013, LB250, § 1; Laws 2016, LB666, § 2.  
Effective date July 21, 2016.

#### 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 motor 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 motor 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; Laws 2016, LB977, § 12.  
Operative date July 21, 2016.

#### 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.

**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.

**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.

**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;
- (xi) A properly registered bus; or
- (xii) A properly registered public power district motor vehicle;
- (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;
  - (viii) A properly registered farm truck; or
  - (ix) A properly registered public power district motor vehicle;
- (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;
  - (ii) Local truck; or
  - (iii) Public power district motor vehicle;
- (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; Laws 2016, LB783, § 13.

Operative date January 1, 2017.

**Cross References**

Nebraska Rules of the Road, see section 60-601.

**60-3,223 Nebraska 150 Sesquicentennial Plates; design.**

(1) The department, in consultation with the Nebraska Sesquicentennial Commission and other interested persons, shall design license plates to be known as Nebraska 150 Sesquicentennial Plates to celebrate and commemorate the one-hundred-fiftieth year of statehood for Nebraska. The department shall ensure that the design reflects support for the sesquicentennial of the State of Nebraska.

(2) The design shall be selected on the basis of (a) enhancing the marketability of the plates to supporters of the sesquicentennial and (b) limiting 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 make applications available for this type of plate when it is designed.

(3) One type of plate under this section shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to seven characters; and
- (b) Not use a county designation.

(4) One type of plate under this section 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.

**Source:** Laws 2015, LB220, § 7.



**60-3,224 Nebraska 150 Sesquicentennial Plates; application; form; fee; transfer; procedure; fee.**

(1) Beginning October 1, 2015, and ending December 31, 2022, a person may apply to the department for Nebraska 150 Sesquicentennial 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 plate under this section 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.

(2) Each application for initial issuance or renewal of Nebraska 150 Sesquicentennial Plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this section shall be remitted to the State Treasurer. The State Treasurer shall credit fifteen percent of the fee for initial issuance and renewal of plates under subsection (3) of section 60-3,223 to the Department of Motor Vehicles Cash Fund and eighty-five percent of such fee to the Nebraska 150 Sesquicentennial Plate Proceeds Fund. The State Treasurer shall credit forty-three percent of the fee for initial issuance and renewal of plates under subsection (4) of section 60-3,223 to the Department of Motor Vehicles Cash Fund and fifty-seven percent of such fee to the Nebraska 150 Sesquicentennial Plate Proceeds Fund.

(3) When the department receives an application for Nebraska 150 Sesquicentennial 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 plates under this section 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 plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(4) The owner of a motor vehicle or cabin trailer bearing Nebraska 150 Sesquicentennial Plates may apply to the county treasurer to have such plates transferred to a motor vehicle or cabin trailer other than the vehicle or trailer for which such plates were originally purchased if such vehicle or trailer 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 or trailer 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. The State Treasurer shall credit fees collected pursuant to this subsection to the Department of Motor Vehicles Cash Fund.

(5) Nebraska 150 Sesquicentennial Plates shall not be issued or renewed beginning on January 1, 2023.

**Source:** Laws 2015, LB220, § 8.

**60-3,225 Nebraska 150 Sesquicentennial Plate Proceeds Fund; created; investment; use.**

(1) The Nebraska 150 Sesquicentennial Plate Proceeds 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) If the cost of manufacturing Nebraska 150 Sesquicentennial 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 150 Sesquicentennial Plate Proceeds Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of such 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 150 Sesquicentennial Plate Proceeds Fund as provided in section 60-3,224.

(3) Until July 1, 2018, the Nebraska 150 Sesquicentennial Plate Proceeds Fund shall be used by the Nebraska Sesquicentennial Commission for purposes of carrying out section 81-8,310. Beginning on July 1, 2018, the State Treasurer shall transfer any money in the fund at the end of each calendar quarter to the Historical Society Fund.

**Source:** Laws 2015, LB220, § 9.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-3,226 Mountain Lion Conservation Plates; design.**

(1) The department shall design license plates to be known as Mountain Lion Conservation Plates. The department shall create designs reflecting support for the conservation of the mountain lion population. The design shall be selected on the basis of limiting 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 make applications available for this type of plate by October 1, 2016. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,227.

(2) One type of Mountain Lion Conservation Plates shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(3) One type of Mountain Lion Conservation Plates 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, except that a maximum of five characters may be used.

**Source:** Laws 2016, LB474, § 9.

Effective date July 21, 2016.

**60-3,227 Mountain Lion Conservation Plates; application; form; fee; transfer; procedure; fee.**

(1) Beginning October 1, 2016, a person may apply to the department for Mountain Lion Conservation Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle or cabin trailer, except for a motor vehicle or cabin trailer registered under section 60-3,198. An applicant receiving a Mountain Lion Conservation 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.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Mountain Lion Conservation 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 pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Game and Parks Commission Educational Fund.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Mountain Lion Conservation Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees 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 Game and Parks Commission Educational Fund.

(3) When the department receives an application for Mountain Lion Conservation 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 Mountain Lion Conservation 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 Mountain Lion Conservation Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The owner of a motor vehicle or cabin trailer bearing Mountain Lion Conservation 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 Mountain Lion Conservation Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Game and Parks Commission Educational Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Mountain Lion Conservation Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Game and Parks Commission Educational Fund.

**Source:** Laws 2016, LB474, § 10.

Effective date July 21, 2016.

**60-3,228 Public power district license plates; application; issuance.**

(1) Upon application and payment of the fees required pursuant to this section and section 60-3,229, each motor vehicle and trailer operated by a

public power district shall be issued permanent public power district license plates. The public power district license plates shall be issued by the county in which the public power district is headquartered.

(2) Public power district vehicles shall display a distinctive license plate provided by the department pursuant to this section.

(3) Any license plate issued pursuant to this section shall remain affixed to the front and rear of the motor vehicle and to the rear of the trailer as long as the public power district vehicle is registered pursuant to this section by the owner or lessor making the original application pursuant to subsection (1) of this section.

**Source:** Laws 2016, LB783, § 11.

Operative date January 1, 2017.

#### **60-3,229 Public power district license plates; registration fee.**

The registration fee for a public power district motor vehicle shall be the fee provided for commercial motor vehicles in section 60-3,147. The registration fee for a public power district trailer shall be the fee provided for a trailer in subsection (2) or (7), as applicable, of section 60-3,151.

**Source:** Laws 2016, LB783, § 12.

Operative date January 1, 2017.

#### **60-3,230 Breast Cancer Awareness Plates; design.**

(1) The department shall design license plates to be known as Breast Cancer Awareness Plates. The design shall include a pink ribbon and the words "early detection saves lives" along the bottom of the plate.

(2) The design shall be selected on the basis of limiting 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 make applications available for this type of plate when it is designed.

(3) One type of plate under this section shall be alphanumeric plates. The department shall:

- (a) Assign a designation up to five characters; and
- (b) Not use a county designation.

(4) One type of plate under this section 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, except that a maximum of five characters may be used.

**Source:** Laws 2016, LB977, § 9.

Operative date July 21, 2016.

#### **60-3,231 Breast Cancer Awareness Plates; application; form; fee; transfer; procedure; fee.**

(1) Beginning January 1, 2017, a person may apply to the department for Breast Cancer Awareness Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a plate under this section 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.

(2) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Breast Cancer Awareness Plates shall be accompanied by a fee of forty dollars. No such additional fee shall be due for the initial issuance or renewal of alphanumeric Breast Cancer Awareness Plates. 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.

(3) When the department receives an application for Breast Cancer Awareness Plates, the department shall deliver the plates to the county treasurer of the county in which the motor vehicle or trailer is registered. The county treasurer shall issue plates under this section 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 trailer. If Breast Cancer Awareness Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(4) The owner of a motor vehicle or trailer bearing Breast Cancer Awareness Plates may apply to the county treasurer to have such plates transferred to a motor vehicle or trailer other than the motor vehicle or trailer for which such plates were originally purchased if such motor vehicle or trailer 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 motor vehicle or trailer 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.

**Source:** Laws 2016, LB977, § 10.

Operative date July 21, 2016.

## ARTICLE 4

### MOTOR VEHICLE OPERATORS' LICENSES

#### (e) GENERAL PROVISIONS

##### Section

60-462.	Act, how cited.
60-462.01.	Federal regulations; adopted.
60-462.02.	Legislative intent; director; department; powers and duties.
60-463.	Definitions, where found.
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## MOTOR VEHICLES

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## Section

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**(e) GENERAL PROVISIONS****60-462 Act, how cited.**

Sections 60-462 to 60-4,189 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; Laws 2013, LB93, § 1; Laws 2014, LB983, § 2; Laws 2015, LB231, § 19; Laws 2016, LB311, § 1; Laws 2016, LB977, § 13.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB311, section 1, with LB977, section 13, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB977 became operative July 21, 2016.

### **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, 2016:

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; Laws 2013, LB35, § 3; Laws 2014, LB776, § 4; Laws 2014, LB983, § 3; Laws 2015, LB313, § 4; Laws 2016, LB929, § 6.  
Effective date March 10, 2016.

### **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.

### **60-463 Definitions, where found.**

For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

**Source:** Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2; Laws 2008, LB911, § 3; Laws 2014, LB983, § 4; Laws 2015, LB231, § 20; Laws 2016, LB311, § 2.  
Effective date March 4, 2016.

**60-463.02 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) in which the operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top and is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and for each occupant a manufacturer-installed three-point safety belt system, (4) having antilock brakes, and (5) designed to be controlled with a steering wheel and pedals.

**Source:** Laws 2015, LB231, § 21.

**60-464 Commercial driver's license, defined.**

Commercial driver's license means an operator's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act to an individual which authorizes such individual to operate a class of commercial motor vehicle.

**Source:** Laws 1989, LB 285, § 14; Laws 2014, LB983, § 5.

**60-465 Commercial motor vehicle, defined.**

(1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);

(b) Has a gross vehicle weight rating or gross vehicle weight of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include:

(a) A covered farm vehicle;

(b) Any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339;

(c) Any emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions which is equipped with audible and visual signals and operated by a public or volunteer fire department; or

(d) Any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by persons identified in section 60-4,131.01.

**Source:** Laws 1989, LB 285, § 15; Laws 2005, LB 76, § 4; Laws 2005, LB 274, § 235; Laws 2006, LB 853, § 8; Laws 2006, LB 1007, § 5; Laws 2010, LB805, § 4; Laws 2014, LB983, § 6.

**60-465.02 Covered farm vehicle, defined.**

(1) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(a) That:

(i) Is traveling in the state in which the vehicle is registered or another state;

(ii) Is operated by:

(A) A farm owner or operator;

(B) A ranch owner or operator; or

(C) An employee or family member of an individual specified in subdivision (1)(a)(ii)(A) or (1)(a)(ii)(B) of this section;

(iii) Is transporting to or from a farm or ranch:

(A) Agricultural commodities;

(B) Livestock; or

(C) Machinery or supplies;

(iv) Except as provided in subsection (2) of this section, is not used in the operations of a for-hire motor carrier; and

(v) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(b) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(i) Less than twenty-six thousand one pounds; or

(ii) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(2) Covered farm vehicle includes a motor vehicle that meets the requirements of subsection (1) of this section, except for subdivision (1)(a)(iv) of this section, and:

(a) Is operated pursuant to a crop share farm lease agreement;

(b) Is owned by a tenant with respect to that agreement; and

(c) Is transporting the landlord's portion of the crops under that agreement.

(3) Covered farm vehicle does not include:

(a) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(b) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the

federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F.

**Source:** Laws 2014, LB983, § 7.

**60-469 Gross vehicle weight rating (GVWR), defined.**

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

**Source:** Laws 1989, LB 285, § 19; Laws 2016, LB311, § 4.  
Effective date March 4, 2016.

**60-469.01 Gross combination weight rating, defined.**

Gross combination weight rating means the greater of (1) a value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard certification label required by the National Highway Traffic Safety Administration, or (2) the sum of the gross vehicle weight ratings or the gross vehicle weights of the power unit and the towed unit or units, or any combination thereof, that produces the highest value. Gross combination weight rating does not apply to a commercial motor vehicle if the power unit is not towing another vehicle.

**Source:** Laws 2016, LB311, § 3.  
Effective date March 4, 2016.

**60-471 Motor vehicle, defined.**

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) bicycles as defined in section 60-611, (2) self-propelled chairs used by persons who are disabled, (3) farm tractors, (4) farm tractors used occasionally outside general farm usage, (5) road rollers, (6) vehicles which run only on rails or tracks, (7) electric personal assistive mobility devices as defined in section 60-618.02, and (8) 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; Laws 2015, LB95, § 7.

**60-474 Operator's or driver's license, defined.**

Operator's or driver's license shall mean any license or permit to operate a motor vehicle issued under the laws of this state, including:

- (1) Any replacement license or instruction permit;
- (2) The privilege of any person to drive a motor vehicle whether such person holds a valid license;
- (3) Any nonresident's operating privilege which shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation of a motor vehicle in this state by such person or the use in this state of a vehicle owned by such person;



(4) An employment driving permit issued as provided by sections 60-4,129 and 60-4,130; and

(5) A medical hardship driving permit issued as provided by sections 60-4,130.01 and 60-4,130.02.

**Source:** Laws 1989, LB 285, § 24; Laws 1993, LB 105, § 5; Laws 1993, LB 370, § 69; Laws 2014, LB777, § 2.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

**60-479 Sections; applicability.**

Sections 60-479.01 to 60-4,111.01, 60-4,113, 60-4,114, 60-4,115 to 60-4,118, and 60-4,182 to 60-4,189 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; Laws 2013, LB93, § 2; Laws 2014, LB983, § 8; Laws 2016, LB311, § 5.

Effective date March 4, 2016.

**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) 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, 2016. 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 information 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, 2016, 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; Laws 2013, LB35, § 4; Laws 2014, LB776, § 5; Laws 2015, LB313, § 5; Laws 2016, LB929, § 7.  
Effective date March 10, 2016.

### **60-480 Operators' licenses; classification.**

Operators' licenses issued by the department pursuant to the Motor Vehicle Operator's License Act shall be classified as follows:

(1) Class O license. The operator's license which authorizes the person to whom it is issued to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle;

(2) Class M license. The operator's license or endorsement on a Class O license, provisional operator's permit, learner's permit, school permit, or commercial driver's license which authorizes the person to whom it is issued to operate a motorcycle on highways;

(3) CDL-commercial driver's license. The operator's license which authorizes the person to whom it is issued to operate a class of commercial motor vehicle or any motor vehicle, except a motorcycle, on highways;

(4) CLP-commercial learner's permit. A permit which when carried with a Class O license authorizes an individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training. When issued to a commercial driver's license holder, a CLP-commercial learner's permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current commercial driver's license is not valid;

(5) RCDL-restricted commercial driver's license. The class of commercial driver's license which, when held with an annual seasonal permit, authorizes a seasonal commercial motor vehicle operator as defined in section 60-4,146.01 to operate any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle for purposes of a farm-related or ranch-related service industry as defined in such section within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served as provided in such section or any other motor vehicle, except a motorcycle, on highways;

(6) POP-provisional operator's permit. A motor vehicle operating permit with restrictions issued pursuant to section 60-4,120.01 to a person who is at least sixteen years of age but less than eighteen years of age which authorizes the person to operate any motor vehicle except a commercial motor vehicle or motorcycle;

(7) SCP-school permit. A permit issued to a student between fourteen years and two months of age and sixteen years of age for the purpose of driving in accordance with the requirements of section 60-4,124;

(8) FMP-farm permit. A permit issued to a person for purposes of operating farm tractors and other motorized implements of farm husbandry on highways in accordance with the requirements of section 60-4,126;

(9) LPD-learner's permit. A permit issued in accordance with the requirements of section 60-4,123 to a person at least fifteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, for learning purposes when accompanied by a licensed operator who is at least twenty-one years of age and who possesses a valid operator's license issued by this state or another state;

(10) LPE-learner's permit. A permit issued to a person at least fourteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, while learning to drive in preparation for application for a school permit;

(11) EDP-employment driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,129 and 60-4,130;

(12) IIP-ignition interlock permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, which is equipped with an ignition interlock device;

(13) SEP-seasonal permit. A permit issued to a person who holds a restricted commercial driver's license authorizing the person to operate a commercial motor vehicle, as prescribed by section 60-4,146.01, for no more than one hundred eighty consecutive days in any twelve-month period. The seasonal permit shall be valid and run from the date of original issuance of the permit for one hundred eighty days and from the date of annual revalidation of the permit; and

(14) MHP-medical hardship driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,130.01 and 60-4,130.02.

**Source:** Laws 1989, LB 285, § 30; Laws 1990, LB 980, § 8; Laws 1993, LB 105, § 6; Laws 1993, LB 420, § 4; Laws 1998, LB 320, § 2; Laws 1999, LB 704, § 4; Laws 2001, LB 387, § 3; Laws 2005, LB 675, § 1; Laws 2008, LB736, § 1; Laws 2014, LB983, § 9.

**60-484 Operator's license required, when; state identification card; application.**

(1) 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.

(2) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department.

(3) 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 subsection (6) of this section, and a brief physical description of himself or herself. The applicant (a) may also complete the voter registration portion pursuant to section 32-308, (b) shall be provided the advisement language required by subsection (5) of section 60-6,197, (c) shall answer the following:

(i) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(A) lost voluntary control or consciousness ... yes ... no

(B) experienced vertigo or multiple episodes of dizziness or fainting ... yes ... no

(C) experienced disorientation ... yes ... no

(D) experienced seizures ... yes ... no

(E) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(ii) 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: .....

(iii) 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: ....., and (d) may answer the following:

(i) Do you wish to register to vote as part of this application process?

(ii) Do you wish to have the word “veteran” displayed on the front of your operator’s license or state identification card to show that you served in the armed forces of the United States? (To be eligible you must register with the Nebraska Department of Veterans’ Affairs registry.)

(iii) Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death?

(iv) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(v) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(4) 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.

(5) The social security number shall not be printed on the operator’s license or state identification card and shall be used only (a) to furnish information to the United States Selective Service System under section 60-483, (b) 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, (c) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (d) 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, (e) to furnish information to the Department of Revenue under section 77-362.02, or (f) to furnish information to the Secretary of State for purposes of the Election Act.

(6)(a) 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 (1) of section 60-484.04.

(b) 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 (6)(a) 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.

(c) 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.

(7) Any individual applying for an operator's license or a state identification card who indicated his or her wish to have the word "veteran" displayed on the front of such license or card shall comply with section 60-4,189.

(8) 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; Laws 2013, LB93, § 3; Laws 2014, LB661, § 16; Laws 2014, LB983, § 10; Laws 2016, LB47, § 1; Laws 2016, LB311, § 6.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB47, section 1, with LB311, section 6, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB47 became operative July 1, 2017.

#### Cross References

**Address Confidentiality Act**, see section 42-1201.

**Donor Registry of Nebraska**, see section 71-4822.

**Election Act**, see section 32-101.

**Nebraska Department of Veterans' Affairs registry**, see section 80-414.

**60-484.02 Digital images and signatures; use; confidentiality; prohibited acts; violation; penalty.**

(1) Each applicant for an operator's license or state identification card shall have his or her digital image captured. Digital images shall be preserved for use as prescribed in sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used for issuing operators' licenses and state identification cards. The images may be retrieved only by the Department of Motor Vehicles for issuing renewal and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(2) Upon application for an operator's license or state identification card, each applicant shall provide his or her signature in a form prescribed by the department. Digital signatures shall be preserved for use on original, renewal, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (4) of this section.

(3) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital image except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a federal, state, or local agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department or law enforcement officer that knowingly discloses or knowingly permits disclosure of a digital image or digital signature in violation of this section shall be guilty of a Class I misdemeanor.

(4) No officer, employee, agent, or contractor of the department or law enforcement officer shall release a digital signature except (a) to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release or (b) to the office of the Secretary of State for the purpose of voter registration as described in section 32-304, 32-308, or 32-309 upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. No employee or official in the office of the Secretary of State shall release a digital signature except to a federal, state, or local law enforcement agency, a certified law enforcement officer employed in an investigative position by a state or federal agency, or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department, law enforcement officer, or employee or official in the office of the Secretary of State that knowingly discloses or knowingly permits disclo-



sure of a digital signature in violation of this section shall be guilty of a Class I misdemeanor.

**Source:** Laws 2001, LB 574, § 4; Laws 2004, LB 560, § 38; Laws 2005, LB 1, § 3; Laws 2009, LB372, § 1; Laws 2010, LB805, § 5; Laws 2014, LB661, § 17; Laws 2014, LB777, § 3.

**60-484.03 Operators' licenses; state identification cards; department; retain copies of source documents.**

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, 60-484.02, and 60-4,144.

**Source:** Laws 2011, LB215, § 6; Laws 2014, LB983, § 11.

**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) The Legislature finds and declares that section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13, enumerated categories of individuals who may demonstrate lawful status for the purpose of eligibility for a federally secure motor vehicle operator's license or state identification card. The Legislature further finds and declares that it was the intent of the Legislature in 2011 to adopt the enumerated categories by the passage of Laws 2011, LB215. The Legislature declares that the passage of Laws 2015, LB623, is for the limited purpose of reaffirming the original legislative intent of Laws 2011, LB215. Except as provided in section 60-4,144 with respect to operators of commercial motor vehicles, before being issued any other 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 as enumerated in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13. 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 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.

(2)(a) If an applicant presents one of the documents listed under subdivision (1)(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 (1)(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 (1) of this section or documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or other federal agencies, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that the applicant has lawful status as enumerated in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13.

(3) An applicant may present other documents as designated by the director as proof of lawful status as enumerated in section 202(c)(2)(B)(i) through (ix) of the federal REAL ID Act of 2005, Public Law 109-13. Any documents accepted shall be recorded according to a written exceptions process established by the director.

**Source:** Laws 2011, LB215, § 7; Laws 2014, LB983, § 12; Laws 2015, LB623, § 1.

**60-484.05 Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal; return of license or card, when.**

(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 sections 60-484 and 60-484.04 that shows his or her authorized stay 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.

(4) If an individual has an operator's license or a state identification card issued based on approved lawful status granted under section 202(c)(2)(B)(i)

through (ix) of the federal REAL ID Act of 2005, Public Law 109-13, and the basis for the approved lawful status is terminated, the individual shall return the operator's license or state identification card to the Department of Motor Vehicles.

**Source:** Laws 2011, LB215, § 8; Laws 2014, LB983, § 13; Laws 2015, LB623, § 2.

**60-484.06 Operators' licenses; state identification cards; department; power to verify documents.**

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, 60-484.04, and 60-4,144.

**Source:** Laws 2011, LB215, § 9; Laws 2014, LB983, § 14.

**60-485 Repealed. Laws 2012, LB 751, § 57.**

**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.

**60-487 Cancellation of certain licenses or permits; 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 CLP-commercial learner's permit or commercial driver's license, or at any time after the CLP-commercial learner's permit or commercial driver's license is issued, that the applicant falsified information contained in the application or in the medical examiner's certificate, the director may summarily cancel the person's CLP-commercial learner's permit or 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; Laws 2014, LB983, § 15; Laws 2016, LB666, § 3.

Effective date July 21, 2016.

**60-493 Organ and tissue donation; county treasurer or licensing staff; distribute brochure; additional information; department; duty.**

(1) When a person applies for an operator's license or state identification card, the county treasurer or licensing staff of the Department of Motor Vehicles shall distribute a brochure provided by an organ and tissue procurement organization and approved by the Department of Health and Human Services containing a description and explanation of the Revised Uniform Anatomical Gift Act to each person applying for a new or renewal license or card.

(2) If an individual desires to receive additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska as indicated on an application and retained by the department under section 60-484, 60-4,144, or 60-4,181, the department shall notify a representative of the federally designated organ procurement organization for Nebraska within five working days of the name and address of such individual.

**Source:** Laws 1977, LB 115, § 3; R.S.1943, (1988), § 60-406.01; Laws 1989, LB 285, § 43; Laws 1992, LB 1178, § 2; Laws 1996, LB 1044, § 280; Laws 1999, LB 704, § 10; Laws 2001, LB 34, § 2; Laws 2004, LB 559, § 2; Laws 2007, LB296, § 229; Laws 2010, LB1036, § 31; Laws 2016, LB311, § 7.

Effective date March 4, 2016.

**Cross References**

Revised Uniform Anatomical Gift Act, see section 71-4824.

**60-494 Operator's license; state identification card; organ and tissue donation information; department; duty.**

(1) Each operator's license and state identification card shall include a special notation on the front of the license or card if the licensee or cardholder is at least sixteen years of age and indicates on the application or issuance

certificate under section 60-484 or 60-4,144 his or her wish to be an organ and tissue donor.

(2) The status as an organ and tissue donor shall continue until amended or revoked by the licensee or cardholder as provided in subsection (4) of this section or section 71-4829. The status as an organ and tissue donor is not changed by the expiration, suspension, cancellation, revocation, or impoundment of the license or card.

(3) Any person whose operator's license or state identification card indicates his or her status as an organ and tissue donor may obtain a replacement license or card without a notation of such status. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

(4) A licensee or cardholder may change his or her status as a donor by indicating the desire that his or her name not be included in the Donor Registry of Nebraska on an application for an operator's license, a state identification card, or a replacement license or card under subsection (3) of this section. A licensee or cardholder may also change or limit the extent of his or her status as a donor by (a) Internet access to the Donor Registry of Nebraska, (b) telephone request to the registry, or (c) other methods approved by the federally designated organ procurement organization for Nebraska.

(5) The department shall electronically transfer to the federally designated organ procurement organization for Nebraska all information which appears on the face of an original or replacement operator's license or state identification card except the image and signature of each person whose license or card includes the notation described in subsection (1) of this section.

**Source:** Laws 1984, LB 711, § 2; Laws 1985, LB 585, § 1; R.S.1943, (1988), § 60-412.01; Laws 1989, LB 285, § 44; Laws 1992, LB 1178, § 3; Laws 1999, LB 704, § 11; Laws 2001, LB 34, § 3; Laws 2001, LB 574, § 8; Laws 2004, LB 559, § 3; Laws 2010, LB1036, § 32; Laws 2016, LB47, § 2.  
Operative date July 1, 2017.

**60-495 Organ and tissue donation; rules and regulations; Organ and Tissue Donor Awareness and Education Fund; created; use; investment.**

(1) The director shall adopt and promulgate such rules and regulations and prepare and furnish all forms and information necessary to carry out sections 60-493 to 60-495 and the duties of the department under the Revised Uniform Anatomical Gift Act.

(2) The Organ and Tissue Donor Awareness and Education Fund is created. Department personnel and the county treasurer shall remit all funds contributed under sections 60-484, 60-4,144, and 60-4,181 to the State Treasurer for credit to the fund. The Department of Health and Human Services shall administer the Organ and Tissue Donor Awareness and Education Fund for the promotion of organ and tissue donation. The department shall use the fund to assist organizations such as the federally designated organ procurement organization for Nebraska and the State Anatomical Board in carrying out activities which promote organ and tissue donation through the creation and dissemination of educational information. 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 1977, LB 115, § 5; R.S.1943, (1988), § 60-406.03; Laws 1989, LB 285, § 45; Laws 1999, LB 147, § 2; Laws 2010, LB1036, § 33; Laws 2016, LB311, § 8.  
Effective date March 4, 2016.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

Revised Uniform Anatomical Gift Act, see section 71-4824.

**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.

**60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restriction 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 shall only operate a motor vehicle equipped with an ignition interlock device. All permits issued pursuant to such sections 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 refiled 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; Laws 2013, LB158, § 1.



**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.

#### 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.

**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.

**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 60-4,114.01 and 60-4,118.01 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; Laws 2014, LB983, § 16.

**60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate or receipt; license; state identification card; county treasurer; duties; delivery of license or card.**

(1) 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. In counties in which the county treasurer collects the fees and issues receipts, the county shall furnish office space for the administration of the operator's license examination. Department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate or receipt. The certificate may be presented to the county treasurer 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 department personnel refuse to issue an issuance certificate or receipt, 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; Laws 2016, LB311, § 9.  
Effective date March 4, 2016.

**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, except that no driving skills test shall be conducted using an autocycle; 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; Laws 2015, LB231, § 22.

**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 by department personnel or the county treasurer 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
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

**MOTOR VEHICLE OPERATORS' LICENSES**

**§ 60-4,115**

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
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
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
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
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
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
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
Replacement	5.00	.25	0	4.75
Temporary	5.00	.25	0	4.75
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
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

**MOTOR VEHICLES**

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
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
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
CLP-commercial learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
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
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
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 and collects the fees, 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 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 identifica-

tion 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; Laws 2014, LB777, § 4; Laws 2014, LB983, § 17; Laws 2016, LB311, § 10.  
Effective date March 4, 2016.

**60-4,115.01 Fee payment returned or not honored; department powers; notice to applicant; contents; payment; department; duties.**

(1) If a fee required under the Motor Vehicle Operator's License Act for issuance of any operator's license or state identification card has been paid by check, draft, or other financial transaction, including an electronic financial transaction, and the check, draft, or financial transaction has been returned or not honored because of insufficient funds, no account, a stop-payment order, or any other reason, the department may cancel or refuse to issue or renew the operator's license or state identification card. Such license shall remain canceled or shall not be issued until the applicant has made full payment as required by subsection (4) of this section.

(2) Prior to taking action described in subsection (1) of this section, the department shall notify the applicant of the proposed action and the reasons for such action in writing, by first-class mail, mailed to the applicant's last-known mailing address provided by the applicant at the time of application.

(3) The department may take the action described in subsection (1) of this section no sooner than seven days after the notice required in subsection (2) of this section has been made.

(4) If an operator's license or state identification card is canceled or refused by the department pursuant to this section, the department shall issue or reinstate the operator's license or state identification card without delay upon

the full payment of the fees owed by the applicant and payment of costs as authorized by section 84-620.

**Source:** Laws 2016, LB311, § 11.  
Effective date March 4, 2016.

**60-4,116 Applicant; department; duties.**

Prior to the issuance of any original or renewal operator's license, the issuance of a replacement 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 learner's permit or 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; Laws 2014, LB777, § 5; Laws 2014, LB983, § 18.

**60-4,117 Operator's license or state identification card; form; department personnel or county treasurer; duties.**

(1) An applicant shall present an issuance certificate to the county treasurer for an operator's license or state identification card. Department personnel or 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;
- (i) A notation of the word "veteran" as provided in section 60-4,189; and
- (j) 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; Laws 2013, LB93, § 5; Laws 2016, LB311, § 12.  
Effective date March 4, 2016.

#### **60-4,118.05 Age requirements; license issued; when.**

(1) No operator's license referred to in section 60-4,118 shall, under any circumstances, be issued to any person who has not attained the age of seventeen years.

(2) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under section 60-4,118 unless such person:

- (a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit; and
- (b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license.

(3) The department may waive the written examination and the driving test required under section 60-4,118 for any person seventeen to twenty-one years of age applying for his or her initial operator's license if he or she has been issued a provisional operator's permit. The department shall not waive the written examination and the driving test required under this section if the person is applying for a CLP-commercial learner's permit or commercial driver's license or if the operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the provisional operator's permit.

**Source:** Laws 2001, LB 38, § 31; Laws 2008, LB911, § 14; Laws 2014, LB983, § 19.

#### **60-4,118.06 Ignition interlock permit; issued; when; operation restriction; 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 only for the operation of a motor vehicle equipped with an ignition interlock device. 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; Laws 2013, LB158, § 2.

**60-4,119 Operators' licenses; state identification cards; digital image and digital signature; exception; procedure.**

(1) All state identification cards and operators' licenses, except farm permits, shall include a digital image and a digital signature of the cardholder or licensee as provided in section 60-484.02. Receipts for state identification cards and operators' licenses shall be issued by the county treasurer or the Department of Motor Vehicles. The director shall negotiate and enter into a contract to provide the necessary equipment, supplies, and forms for the issuance of the licenses and cards. All costs incurred by the Department of Motor Vehicles under this section shall be paid by the state out of appropriations made to the department. All costs of capturing the digital images and digital signatures shall be paid by the issuer from the fees provided to the issuer pursuant to section 60-4,115.

(2) A person who is out of the state at the time of renewal of his or her operator's license may apply for a license upon payment of a fee as provided in section 60-4,115. The license may be issued at any time within one year after the expiration of the original license. Such application shall be made to the department, and the department shall issue the license.

(3) Any operator's license and any state identification card issued to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the operator's license or state identification card of a person who is not a minor.

**Source:** Laws 1977, LB 90, § 1; Laws 1978, LB 574, § 3; Laws 1981, LB 46, § 1; Laws 1982, LB 877, § 1; Laws 1984, LB 811, § 3; Laws 1986, LB 575, § 1; Laws 1989, LB 284, § 4; R.S.1943, (1988), § 60-406.04; Laws 1989, LB 285, § 69; Laws 1990, LB 980, § 9; Laws 1993, LB 201, § 1; Laws 1995, LB 467, § 13; Laws 1999, LB 704, § 19; Laws 2001, LB 574, § 13; Laws 2005, LB 1, § 6; Laws 2010, LB861, § 80; Laws 2014, LB777, § 6.

#### **60-4,120 Operator's license; state identification card; replacement.**

(1) 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 for a replacement license or card.

(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.

(3) In the event a mutilated or unreadable operator's license is held by any person duly licensed under the act or a mutilated or 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 report of the mutilated or unreadable license or card and application for a replacement license or card, a replacement license or card may be issued if the department is satisfied that the original license or card is mutilated or unreadable.

(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 replacement operator's license or card by applying to the department and reporting such loss. Upon receipt of a correctly completed application, the department shall cause to be issued a replacement operator's license or card.

(5) Any person who holds a valid operator's license or state identification card without a digital image 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 and no license or card shall be issued until the individual has made application for replacement or renewal.

(6) Application for a replacement operator's license or state identification card shall include the information required under sections 60-484 and 60-484.04.

(7) An applicant may obtain a replacement operator's license or state identification card pursuant to subsection (1) or (3) of this section by electronic means in a manner prescribed by the department. No replacement license or card shall be issued unless the applicant has a digital image and digital signature preserved in the digital system.

(8) Each replacement operator's license or state identification card shall be issued with the same expiration date as the license or card for which the replacement is issued. The replacement license or card shall also state the new issuance date. Upon issuance of any replacement license or card, the license or card for which the replacement is issued shall be void.

(9) A replacement operator's license or state identification card issued under this section shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer or department 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.

**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; Laws 2014, LB777, § 7.

**60-4,120.01 Provisional operator's permit; application; issuance; operation restrictions.**

(1)(a) Any person who is at least sixteen years of age but less than eighteen years of age may be issued a provisional operator's permit by the Department of Motor Vehicles. The provisional operator's permit shall expire on the applicant's eighteenth birthday.

(b) No provisional operator's permit shall be issued to any person unless such person:

(i) Has possessed a valid LPD-learner's permit, LPE-learner's permit, or SCP-school permit for at least a six-month period beginning on the date of issuance of such person's LPD-learner's permit, LPE-learner's permit, or SCP-school permit; and

(ii) Has not accumulated three or more points pursuant to section 60-4,182 during the six-month period immediately preceding the date of the application for the provisional operator's permit.

(c) The requirements for the provisional operator's permit prescribed in subdivisions (2)(a) and (b) of this section may be completed prior to the applicant's sixteenth birthday. A person may apply for a provisional operator's permit and take the driving test and the written examination, if required, at any time within sixty days prior to his or her sixteenth birthday upon proof of age in the manner provided in section 60-484.

(2) In order to obtain a provisional operator's permit, the applicant shall present (a)(i) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (A) the effects of the consumption of alcohol on a person operating a motor vehicle, (B) occupant protection systems, (C) risk assessment, and (D) railroad crossing safety and (ii) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (b) 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 including at least ten hours of motor vehicle operation between sunset and sunrise, 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. If the applicant presents such a certificate, the applicant shall be required to successfully complete a driving test administered by the department. The written examination shall be waived if the applicant has been issued a Nebraska LPD-learner's permit or has been issued a Nebraska LPE-learner's permit and such permit is valid or has been expired for no more than one year. However, the department shall not waive the written examination if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPD-learner's or LPE-learner's permit. Upon presentation by the applicant of a form prescribed by the department showing successful completion of the driver safety course, the written examination and driving test may be waived. Upon presentation of the certificate, the written examination but not the driving test may be waived. Licensing staff shall waive the written examination and the driving test if the applicant has been issued a school permit and such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the school permit.

(3)(a) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the period beginning at 6 a.m. and ending at 12 midnight except when he or she is en route to or from his or her residence to his or her place of employment or a school activity. The holder of a provisional operator's permit may operate a motor vehicle on the highways of this state at any hour of the day or night if accompanied by 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.

(b) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the first six months of holding the permit with no more than one passenger who is not an immediate family member and who is under nineteen years of age.

(c) The holder of a provisional operator's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state.

(d) Enforcement of subdivisions (a), (b), and (c) of this subsection shall be accomplished only as a secondary action when the holder of the provisional operator's permit has been cited or charged with a violation of some other law.

(4) Department personnel or the county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each provisional operator's permit.

**Source:** Laws 1998, LB 320, § 7; Laws 1999, LB 704, § 20; Laws 2001, LB 387, § 6; Laws 2001, LB 574, § 15; Laws 2005, LB 1, § 8; Laws 2005, LB 675, § 2; Laws 2007, LB415, § 4; Laws 2008, LB911, § 15; Laws 2016, LB311, § 13.  
Effective date March 4, 2016.

**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.

**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 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, including a licensee who is out of the state at the time of renewal, must apply for renewal in person at least once every ten years and have a new digital image and digital signature captured.

(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 captured.

(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; Laws 2014, LB777, § 8.

**60-4,123 LPD-learner's permit; application; issuance; operation restrictions.**

(1) Any person who is at least fifteen years of age may apply for an LPD-learner's permit from the department. In order to obtain an LPD-learner's permit, the applicant shall successfully complete a written examination. A person may take the written examination beginning sixty days prior to his or her fifteenth birthday but shall not be issued a permit until he or she is fifteen

years of age. The written examination may be waived for any person who has been issued an LPE-learner's permit, LPD-learner's permit, or SCP-school permit that has been expired for no more than one year.

(2) Upon successful completion of the written examination and the payment of a fee and surcharge as prescribed in section 60-4,115, the applicant shall be issued an LPD-learner's permit as provided in section 60-4,113. The permit shall be valid for twelve months.

(3)(a) The holder of an LPD-learner's permit shall only operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age and who has been licensed by this state or another state and if (i) for all motor vehicles other than autcycles, motorcycles, or mopeds, he or she is actually occupying the seat beside the licensed operator, (ii) in the case of an autcycle, he or she is actually occupying the seat beside or in front of the licensed operator, or (iii) in the case of a motorcycle or moped, he or she 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.

(b) The holder of an LPD-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 LPD-learner's permit has been cited or charged with a violation of some other law.

(4) Department personnel or the county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each LPD-learner's permit.

**Source:** Laws 1989, LB 285, § 73; Laws 1991, LB 44, § 3; Laws 1998, LB 320, § 10; Laws 1999, LB 704, § 24; Laws 2001, LB 574, § 17; Laws 2005, LB 675, § 3; Laws 2007, LB415, § 5; Laws 2008, LB911, § 17; Laws 2015, LB231, § 23; Laws 2016, LB311, § 14. Effective date March 4, 2016.

#### **60-4,123.01 Fourteen-year-old person; operation permitted.**

For purposes of driver training, any person who has attained or will attain the age of fourteen years on or before October 15 of the current year may operate a motor vehicle, other than an autcycle, upon the highways of this state if he or she is accompanied or, in the case of a motorcycle or moped, supervised at all times by a licensed operator who is a driver training instructor certified by the Commissioner of Education.

**Source:** Laws 1991, LB 44, § 4; Laws 2015, LB231, § 24.

#### **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 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 motorcy-

cle 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 or an auticycle:

(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 (i) for all motor vehicles other than auticycles, motorcycles, or mopeds, actually occupy the seat beside the permitholder, (ii) in the case of an auticycle, actually occupy the seat beside or behind the permitholder, or (iii) 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 or an auticycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if (i) for all motor vehicles other

than autocycles, motorcycles, or mopeds, he or she has seated next to him or her a person who is a licensed operator, (ii) in the case of an autocycle, he or she has seated next to or behind him or her a person who is a licensed operator, or (iii) in the case of a motorcycle or moped, 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) Department personnel or 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; Laws 2015, LB231, § 25; Laws 2016, LB311, § 15; Laws 2016, LB814, § 1.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB311, section 15, with LB814, section 1, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB814 became effective July 21, 2016.

**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.

**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 replacement 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; Laws 2014, LB777, § 9.

**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) Department personnel shall conduct the examination of the applicants and deliver to each successful applicant an issuance certificate or a receipt. If department personnel issue a receipt, department personnel 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. In counties where the county treasurer collects fees and issues receipts, the certificate may be presented to the county treasurer within ninety days after issuance. 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. If department personnel refuse to issue an issuance certificate or receipt, the department personnel shall state such cause in writing and deliver such written cause to the applicant. 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 or department personnel shall 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; Laws 2016, LB311, § 16.

Effective date March 4, 2016.

**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.

(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 operate 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 CLP-commercial learner's permit or commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(f) Foreign means outside the fifty United States and the District of Columbia;

(g) Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment;

(h) Issue and issuance means initial issuance, transfer, renewal, or upgrade of a CLP-commercial learner's permit, commercial driver's license, nondomiciled CLP-commercial learner's permit, or nondomiciled commercial driver's license, as described in 49 C.F.R. 383.73;

(i) Medical examiner means an individual certified by the Federal Motor Carrier Safety Administration and listed on the National Registry of Certified Medical Examiners in accordance with 49 C.F.R. part 390, subpart D;

(j) 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;

(k) 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;

(l) Nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license means a CLP-commercial learner's permit or commercial driver's license, respectively, issued by this state or other jurisdiction under either of the following two conditions:

(i) To an individual domiciled in a foreign country meeting the requirements of 49 C.F.R. 383.23(b)(1); and

(ii) To an individual domiciled in another state meeting the requirements of 49 C.F.R. 383.23(b)(2);

(m) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(n) State means a state of the United States and the District of Columbia;

(o) 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;

(p) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks that have an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more and that are either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle;

(q) Third-party skills test examiner means a person employed by a third-party tester who is authorized by this state to administer the commercial driver's license skills tests specified in 49 C.F.R. part 383, subparts G and H;

(r) Third-party tester means a person, including, but not limited to, another state, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government, authorized by this state to employ skills test examiners to administer the commercial driver's license skills tests specified in 49 C.F.R. part 383, subparts G and H;

(s) United States means the fifty states and the District of Columbia; and

(t) 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; Laws 2014, LB983, § 20; Laws 2016, LB666, § 4; Laws 2016, LB977, § 14.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB666, section 4, with LB977, section 14, to reflect all amendments.

**Note:** Changes made by LB666 became effective July 21, 2016. Changes made by LB977 became operative July 21, 2016.

**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; Laws 2014, LB983, § 21.

**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; Laws 2014, LB983, § 22.

**60-4,137 Operation of commercial motor vehicle; valid commercial driver's license or valid CLP-commercial learner's permit required.**

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a valid commercial driver's license or a valid CLP-commercial learner's permit issued pursuant to the Motor Vehicle Operator's License Act.

**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; Laws 2014, LB983, § 23.

**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) E — No manual transmission equipped commercial motor vehicle;

(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 — No tractor-trailer commercial motor vehicle;

(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; and



(h) Z — No full air brake equipped 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; Laws 2014, LB983, § 24.

**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 a valid commercial 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; Laws 2014, LB983, § 25.

**60-4,141 Operation outside classification of license; restrictions; violation; penalty.**

(1) Except as provided in subsections (2), (3), and (4) of this section, no person shall operate any class of commercial motor vehicle upon the highways of this state unless such person possesses a valid commercial driver's license authorizing the operation of the class of commercial motor vehicle being operated, except that (a) any person possessing a valid commercial driver's license authorizing the operation of a Class A commercial motor vehicle may lawfully operate any Class B or C commercial motor vehicle and (b) any person possessing a valid commercial driver's license authorizing the operation of a Class B commercial motor vehicle may lawfully operate a Class C commercial motor vehicle. No person shall operate upon the highways of this state any commercial motor vehicle which requires a specific endorsement unless such person possesses a valid commercial driver's license with such endorsement. No person possessing a restricted commercial driver's license shall operate upon the highways of this state any commercial motor vehicle to which such restriction is applicable.

(2)(a) Any person holding a CLP-commercial learner's permit may operate a commercial motor vehicle for learning purposes upon the highways of this state if accompanied by a person who is twenty-one years of age or older, who holds a commercial driver's license valid for the class of commercial motor vehicle being operated, and who occupies the seat beside the person for the purpose of giving instruction in the operation of the commercial motor vehicle. Any person holding a CLP-commercial learner's permit may operate a commercial motor vehicle upon the highways of this state for purposes of taking a driving skills examination if accompanied by licensing staff who is designated by the director under section 60-4,149 or an examiner employed by a third-party tester certified pursuant to section 60-4,158 and who occupies the seat beside the person for the purpose of giving the examination. A person holding a CLP-commercial learner's permit shall not operate a commercial motor vehicle transporting hazardous materials. A holder of a commercial learner's permit

may operate a Class A combination vehicle, Class B heavy straight vehicle, or Class C small vehicle, as appropriate.

(b) A CLP-commercial learner's permit shall only be allowed to bear any of the following endorsements: (i) P — Passenger; (ii) S — School bus; and (iii) N — Tank vehicle.

(c) A CLP-commercial learner's permit shall only be allowed to bear any of the following restrictions: (i) K — Operation of a commercial motor vehicle only in intrastate commerce; (ii) L — Operation of only a commercial motor vehicle which is not equipped with air brakes; (iii) V — Operation of a commercial motor vehicle for drivers with medical variance documentation; (iv) P — No passengers in commercial motor vehicle bus; and (v) X — No cargo in commercial motor vehicle tank vehicle.

(3) Except for nonresident individuals who are enrolled and taking training in a driver training school in this state, any holder of a nonresident commercial learner's permit or nonresident commercial driver's license who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued CLP-commercial learner's permit or commercial driver's license and shall surrender to the department any operator's license issued to such nonresident by any other state.

(4) Except for individuals who are enrolled and taking training in a driver training school in this state, any holder of a nondomiciled commercial learner's permit or nondomiciled commercial driver's license issued by another state who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued CLP-commercial learner's permit or commercial driver's license and shall surrender to the department any operator's license issued to such individual by any other state.

(5) An operator's license surrendered pursuant to this section may be returned to the driver after the license has been perforated with the word "VOID".

(6) Any person who operates a commercial motor vehicle upon the highways of this state in violation of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 91; Laws 1990, LB 980, § 15; Laws 1993, LB 7, § 4; Laws 1999, LB 704, § 28; Laws 2005, LB 76, § 10; Laws 2014, LB983, § 26.

#### **60-4,142 CLP-commercial learner's permit issuance; renewal.**

Any resident or nondomiciled applicant may obtain a CLP-commercial learner's permit from the department by making application to licensing staff of the department. An applicant shall present proof to licensing staff that he or she holds a valid Class O license or commercial driver's license or a foreign nondomiciled applicant shall successfully complete the requirements for the Class O license before a CLP-commercial learner's permit is issued. An applicant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155 and examinations for all previously issued endorsements as provided in 49 C.F.R. 383.25(a)(3) and 49 C.F.R. 383.153(b)(2)(vii). 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 a CLP-commercial learner's permit. The CLP-commercial learner's permit shall be valid for a period of one hundred eighty days. The CLP-commercial learner's permit holder may renew the CLP-commercial learner's permit for an additional one hundred eighty days without retaking the general and endorsement knowledge tests. The successful applicant shall pay the fee prescribed in section 60-4,115 for the issuance or renewal of a CLP-commercial 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; Laws 2014, LB983, § 27; Laws 2016, LB311, § 17. Effective date March 4, 2016.

**60-4,143 Commercial driver's license; CLP-commercial learner's permit; issuance; restriction; surrender of other licenses.**

(1) No commercial driver's license or CLP-commercial 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 CLP-commercial 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 destroyed, and the director shall send notice to the other state that the operator's license has been surrendered.

**Source:** Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11; Laws 2011, LB178, § 11; Laws 2014, LB983, § 28.

**60-4,144 Commercial driver's license; CLP-commercial learner's permit; applications; contents; application; demonstration of knowledge and skills; information and documentation required; verification.**

(1) An applicant for issuance of 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 section 60-4,144.01. 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)(a) Before being issued a CLP-commercial learner's permit or commercial driver's license, the applicant shall provide (i) his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, (ii) two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, except that a nondomiciled applicant for a CLP-commercial learner's permit or nondomiciled commercial driver's license holder does not have to provide proof of residence in Nebraska, (iii) evidence of identity as required by this section, and (iv) a brief physical description of himself or herself.

(b) The applicant's social security number shall not be printed on the CLP-commercial learner's permit or commercial driver's license 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 certification 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, (v) to furnish information to the Department of Revenue under section 77-362.02, or (vi) to furnish information to the Secretary of State for purposes of the Election Act.

(c) No person shall be a holder of a CLP-commercial learner's permit or commercial driver's license and a state identification card at the same time.

(3) Before being issued a CLP-commercial learner's permit or commercial driver's license, an applicant, except a nondomiciled applicant, shall provide proof that this state is his or her state of residence. Acceptable proof of residence is a document with the person's name and residential address within this state.

(4)(a) Before being issued a CLP-commercial learner's permit or commercial driver's license, an applicant shall provide proof of identity.

(b) The following are acceptable as proof of identity:

- (i) A valid, unexpired United States passport;
- (ii) 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;
- (iii) A Consular Report of Birth Abroad issued by the United States Department of State;
- (iv) A valid, unexpired permanent resident card issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services;
- (v) An unexpired employment authorization document issued by the United States Department of Homeland Security;
- (vi) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved form documenting the applicant's most recent admittance into the United States;
- (vii) A Certificate of Naturalization issued by the United States Department of Homeland Security;
- (viii) A Certificate of Citizenship issued by the United States Department of Homeland Security;

(ix) 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

(x) Such other documents as the director may approve.

(c) If an applicant presents one of the documents listed under subdivision (b)(i), (ii), (iii), (iv), (vii), or (viii) of this subsection, the verification of the applicant's identity will also provide satisfactory evidence of lawful status.

(d) If the applicant presents one of the identity documents listed under subdivision (b)(v), (vi), or (ix) of this subsection, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subdivision (4)(b) of this section, a document from subsection (5) 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 United States Citizenship and Immigration Services.

(e) An applicant may present other documents as designated by the director as proof of identity. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(5)(a) Whenever a person is renewing, replacing, upgrading, transferring, or applying as a nondomiciled individual to this state for a CLP-commercial learner's permit or commercial driver's license, the Department of Motor Vehicles shall verify the citizenship in the United States of the person or the lawful status in the United States of the person.

(b) The following are acceptable as proof of citizenship or lawful status:

(i) A valid, unexpired United States passport;

(ii) 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, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(iii) A Consular Report of Birth Abroad issued by the United States Department of State;

(iv) A Certificate of Naturalization issued by the United States Department of Homeland Security;

(v) A Certificate of Citizenship issued by the United States Department of Homeland Security; or

(vi) A valid, unexpired Permanent Resident Card issued by the United States Department of Homeland Security or United States Citizenship and Immigration Services.

(6) 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.

(7)(a) An applicant shall obtain a nondomiciled CLP-commercial driver's license or nondomiciled CLP-commercial learner's permit:

(i) If the applicant is domiciled in a foreign jurisdiction and the Federal Motor Carrier Safety Administrator has not determined that the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of 49 C.F.R. part 383; or

(ii) If the applicant is domiciled in a state that is prohibited from issuing commercial learners' permits and commercial drivers' licenses in accordance with 49 C.F.R. 384.405. Such person is eligible to obtain a nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license from Nebraska that complies with the testing and licensing standards contained in subparts F, G, and H of 49 C.F.R. part 383.

(b) An applicant for a nondomiciled CLP-commercial learner's permit and nondomiciled commercial driver's license must do the following:

(i) Complete the requirements to obtain a CLP-commercial learner's permit or a commercial driver's license under the Motor Vehicle Operator's License Act, except that an applicant domiciled in a foreign jurisdiction must provide an unexpired employment authorization document issued by the United States Citizenship and Immigration Services or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States. No proof of domicile is required;

(ii) After receipt of the nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license and, for as long as the permit or license is valid, notify the Department of Motor Vehicles of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his or her driving privileges. Such adverse actions include, but are not limited to, license disqualification or disqualification from operating a commercial motor vehicle for the convictions described in 49 C.F.R. 383.51. Notifications must be made within the time periods specified in 49 C.F.R. 383.33; and

(iii) Provide a mailing address to the Department of Motor Vehicles. If the applicant is applying for a foreign nondomiciled CLP-commercial learner's permit or foreign nondomiciled commercial driver's license, he or she must provide a Nebraska mailing address and his or her employer's mailing address to the Department of Motor Vehicles.

(c) An applicant for a nondomiciled CLP-commercial learner's permit or nondomiciled commercial driver's license who holds a foreign operator's license is not required to surrender his or her foreign operator's license.

(8) Any person applying for a CLP-commercial learner's permit or commercial driver's license may answer the following:

(a) Do you wish to register to vote as part of this application process?

(b) Do you wish to have the word "veteran" displayed on the front of your operator's license to show that you served in the armed forces of the United States? (To be eligible you must register with the Nebraska Department of Veterans' Affairs registry.)

(c) Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death?

(d) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(e) Do you wish to donate \$1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(9) Application for a CLP-commercial learner's permit or commercial driver's license shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the permit or license is true and correct.



(10) Any person applying for a CLP-commercial learner's permit or commercial driver's license 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 of Motor Vehicles in order to be issued a CLP-commercial learner's permit or a commercial driver's license.

(11) 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 drivers' licenses. Holders of commercial drivers' 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; Laws 2014, LB983, § 29; Laws 2015, LB575, § 29; Laws 2016, LB47, § 3; Laws 2016, LB311, § 18.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB47, section 3, with LB311, section 18, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB47 became operative July 1, 2017.

#### Cross References

**Address Confidentiality Act**, see section 42-1201.

**Donor Registry of Nebraska**, see section 71-4822.

**Election Act**, see section 32-101.

**Nebraska Department of Veterans' Affairs registry**, see section 80-414.

### **60-4,144.01 Commercial drivers' licenses; certification required; medical examiner's certificate.**

Certification shall be made as follows:

(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. The medical examination required in order to obtain a medical examiner's certificate shall be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners. Any nonexcepted holder of a commercial learner's permit or commercial driver's license 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 therefore 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 therefore 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; Laws 2014, LB983, § 30; Laws 2016, LB666, § 5.

Effective date July 21, 2016.

**60-4,144.02 Commercial drivers' licenses; CLP-commercial learner's permit; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.**

(1) For each operator of a commercial motor vehicle required to have a commercial driver's license or CLP-commercial learner's permit, 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) 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) 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) 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 holder of the commercial driver's license or CLP-commercial learner's permit of his or her "not-certified" medical certification status and that the CLP-commercial learner's permit or commercial driver's license privilege will be removed from the driver's license or permit 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) 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-certified" and initiate a commercial driver's license downgrade following department procedures in accordance with subdivision (4)(a)(ii) of this section. The CLP-commercial learner's permit or commercial driver's license shall be canceled and marked as "not-certified".

**Source:** Laws 2011, LB178, § 14; Laws 2014, LB983, § 31; Laws 2016, LB666, § 6.

Effective date July 21, 2016.

**60-4,144.03 Temporary CLP-commercial learner's permit or commercial driver's license; issuance; renewal.**

(1) The department shall issue a CLP-commercial learner's permit or a commercial driver's license that is temporary only to any applicant who presents documentation under section 60-4,144 that shows his or her authorized stay in the United States is temporary. A CLP-commercial learner's permit or a commercial driver's license 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) A CLP-commercial learner's permit or a commercial driver's license that is temporary shall clearly indicate that it is temporary with a special notation that states the date on which it expires.

(3) A CLP-commercial learner's permit or a commercial driver's license that is temporary may be renewed only upon presentation of valid documentary evidence that the status, by which the applicant qualified for the CLP-commercial learner's permit or commercial driver's license that is temporary, has been extended by the United States Department of Homeland Security.

**Source:** Laws 2014, LB983, § 32.

**60-4,144.04 CLP-commercial learner's permit; precondition to issuance of commercial driver's license.**

(1) The issuance of a CLP-commercial learner's permit is a precondition to the initial issuance of a commercial driver's license. The issuance of a CLP-commercial learner's permit is also a precondition to the upgrade of a commercial driver's license if the upgrade requires a skills test, however, the CLP-commercial learner's permit holder is not eligible to take the skills test in the first fourteen days after initial issuance of the CLP-commercial learner's permit.

(2) The CLP-commercial learner's permit holder is not eligible to take the commercial driver's license skills test in the first fourteen days after initial issuance of the CLP-commercial learner's permit.

**Source:** Laws 2014, LB983, § 33.

**60-4,145 Repealed. Laws 2014, LB983, § 69.**

**60-4,146 Application; requirements of federal law; certification.**

(1) 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 or 60-4,148.01, 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 or 60-4,148.01, 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 for a CLP-commercial learner's permit or commercial driver's license, 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; Laws 2014, LB983, § 34; Laws 2016, LB977, § 16.  
Operative date July 21, 2016.

**60-4,147.01 Driver's record; disclosure of convictions; requirements.**

The department, a prosecutor, or a court must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP-commercial learner's permit driver's conviction or commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

**Source:** Laws 2005, LB 76, § 16; Laws 2014, LB983, § 35.

**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, 2016, 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; Laws 2013, LB35, § 5; Laws 2014, LB776, § 6; Laws 2015, LB313, § 6; Laws 2016, LB929, § 8.  
Effective date March 10, 2016.

**60-4,147.03 Hazardous materials endorsement; application process.**

An applicant for a new, renewal, or transferred hazardous materials endorsement shall complete an application process including threat assessment, background check, fingerprints, and payment of fees as prescribed by 49 C.F.R. 1522, 1570, and 1572. Upon receipt of a determination of threat assessment

from the Transportation Security Administration of the United States Department of Homeland Security or its agent, the department shall retain the application for not less than one year.

**Source:** Laws 2005, LB 76, § 18; Laws 2016, LB666, § 7.  
Effective date July 21, 2016.

**60-4,148 Commercial drivers' licenses; issuance.**

(1) All commercial drivers' licenses shall be issued by the department as provided in sections 60-4,148.01 and 60-4,149. Successful applicants shall pay the fee and surcharge prescribed in section 60-4,115.

(2) Any person making application to add or remove a class of commercial motor vehicle, any endorsement, or any restriction to or from a previously issued and outstanding commercial driver's license shall pay the fee and surcharge prescribed in section 60-4,115. The fee for an original or renewal seasonal permit to revalidate the restricted commercial motor vehicle operating privilege to a previously issued and outstanding restricted commercial driver's license shall be the fee and surcharge prescribed in section 60-4,115.

**Source:** Laws 1989, LB 285, § 98; Laws 1990, LB 980, § 20; Laws 1991, LB 854, § 2; Laws 1993, LB 420, § 10; Laws 1997, LB 752, § 143; Laws 1998, LB 309, § 9; Laws 1999, LB 704, § 33; Laws 2001, LB 574, § 24; Laws 2008, LB911, § 22; Laws 2016, LB977, § 17.  
Operative date July 21, 2016.

**60-4,148.01 Commercial drivers' licenses; CLP-commercial learners' permits; electronic renewal and replacement; department; duties; applicant; requirements; renewal; fee and surcharge; delivery.**

(1) The department may develop and offer methods for successful applicants to obtain commercial drivers' licenses electronically and for the electronic renewal and replacement of commercial drivers' licenses and CLP-commercial learners' permits.

(2)(a) An applicant who has successfully passed the knowledge and skills tests for a commercial driver's license pursuant to section 60-4,149 and who has a digital image and digital signature preserved in the digital system that is not more than ten years old may obtain a commercial driver's license using the preserved digital image and digital signature by electronic means in a manner prescribed by the department pursuant to this subsection.

(b) To be eligible to obtain a license pursuant to this subsection:

(i) There must have been no changes to the applicant's name since his or her most recent application for a CLP-commercial learner's permit;

(ii) The new license must not contain a hazardous materials endorsement;

(iii) The applicant must meet the requirements of section 60-4,144 and submit the information and documentation and make the certifications required under section 60-4,144; and

(iv) The applicant must satisfy any other eligibility criteria that the department may prescribe pursuant to subsection (6) of this section.



(c) The successful applicant shall pay the fee and surcharge prescribed in section 60-4,115. Upon receipt of such fee and surcharge and an application it deems satisfactory, the department shall deliver the license by mail.

(3)(a) An applicant whose commercial driver's license or CLP-commercial learner's permit expires prior to his or her seventy-second birthday and who has a digital image and digital signature preserved in the digital system may, once every ten years, renew such license or permit using the preserved digital image and digital signature by electronic means in a manner prescribed by the department pursuant to this subsection.

(b) To be eligible for renewal under this subsection:

(i) The renewal must be prior to or within one year after expiration of such license or permit;

(ii) The driving record abstract maintained in the department's computerized records must show that such license or permit is not suspended, revoked, canceled, or disqualified;

(iii) There must be no changes to the applicant's name or to the class, endorsements, or restrictions on such license or permit;

(iv) The applicant must not hold a hazardous materials endorsement or must relinquish such endorsement;

(v) The applicant must meet the requirements of section 60-4,144 and submit the information and documentation and make the certifications required under section 60-4,144; and

(vi) The applicant must satisfy any other eligibility criteria that the department may prescribe pursuant to subsection (6) of this section.

(c) Every applicant seeking renewal of his or her commercial driver's license or CLP-commercial learner's permit must apply for renewal in person at least once every ten years and have a new digital image and digital signature captured.

(d) An applicant seeking renewal under this subsection (3) shall pay the fee and surcharge prescribed in section 60-4,115. Upon receipt of such fee and surcharge and an application it deems satisfactory, the department shall deliver the renewal license or permit by mail.

(4)(a) Any person holding a commercial driver's license or CLP-commercial learner's permit who has a digital image and digital signature not more than ten years old preserved in the digital system and who loses his or her license or permit, who requires issuance of a replacement license or permit because of a change of address, or whose license or permit is mutilated or unreadable may obtain a replacement commercial driver's license or CLP-commercial learner's permit using the preserved digital image and digital signature by electronic means in a manner prescribed by the department pursuant to this subsection.

(b) To be eligible to obtain a replacement license or permit pursuant to this subsection:

(i) There must be no changes to the applicant's name and no changes to the class, endorsements, or restrictions on such license or permit;

(ii) The applicant must meet the requirements of section 60-4,144 and submit the information and documentation and make the certifications required under section 60-4,144; and

(iii) The applicant must satisfy any other eligibility criteria that the department may prescribe pursuant to subsection (6) of this section.

(c) An application for a replacement license or permit because of a change of address shall be made within sixty days after the change of address.

(d) An applicant seeking replacement under this subsection (4) shall pay the fee and surcharge prescribed in section 60-4,115. Upon receipt of such fee and surcharge and an application it deems satisfactory, the department shall deliver the replacement license or permit by mail. The replacement license or permit shall be subject to the provisions of subsection (4) of section 60-4,150.

(5) An application to obtain a commercial driver's license or to renew or replace a commercial driver's license or CLP-commercial learner's permit because of a change of name may not be made electronically pursuant to this section and shall be made in person at a licensing station within sixty days after the change of name.

(6) The department may adopt and promulgate rules and regulations governing eligibility for the use of electronic methods for successful applicants to obtain commercial drivers' licenses and for the renewal and replacement of commercial drivers' licenses and CLP-commercial learners' permits, taking into consideration medical and vision requirements, safety concerns, and any other factors consistent with the purposes of the Motor Vehicle Operator's License Act that the director deems relevant.

**Source:** Laws 2016, LB977, § 15.

Operative date July 21, 2016.

**60-4,149 Commercial driver's license; CLP-commercial learner's permit; department personnel; examination; office space; issuance; delivery; electronic submission.**

(1) The director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a commercial driver's license or a CLP-commercial learner's permit as provided in section 60-4,144. The same department personnel may be assigned to one or more counties by the director. In counties in which the county treasurer collects the fees and issues receipts, the county shall furnish office space for the administration of the license or permit examination. Department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate or receipt. The certificate may be presented to the county treasurer 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 a commercial driver's license or CLP-commercial learner's permit is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If department personnel refuse to issue an issuance certificate or receipt, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(2)(a) The segments of the driving skills examination shall be administered and successfully completed in the following order: Pre-trip inspection, basic vehicle control skills, and on-road skills. If an applicant fails one segment of the driving skills examination:

(i) The applicant cannot continue to the next segment of the examination; and

(ii) Scores for the passed segments of the examination are only valid during initial issuance of a CLP-commercial learner's permit. If a CLP-commercial learner's permit is renewed, all three segments of the skills examination must be retaken.

(b) Passing scores for the knowledge and skills tests must meet the standards contained in 49 C.F.R. 383.135.

(3) Except as provided for in sections 60-4,157 and 60-4,158, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate or receipt entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate or receipt, 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.

(4) The successful applicant shall, within ten days after renewal or within twenty-four hours after initial issuance, pay the fee and surcharge as provided in section 60-4,115. A receipt with driving privileges which is valid for up to thirty days shall be issued. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

(5) In lieu of proceeding under subsection (4) of this section, the successful applicant may pay the fee and surcharge as provided in section 60-4,115 and electronically submit an application prescribed by the department in a manner prescribed by the department pursuant to section 60-4,148.01.

**Source:** Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23; Laws 2011, LB215, § 20; Laws 2014, LB983, § 36; Laws 2016, LB311, § 19; Laws 2016, LB977, § 18.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB311, section 19, with LB977, section 18, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB977 became operative July 21, 2016.

**60-4,149.01 Commercial drivers' licenses; law examination; exceptions; waiver.**

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2) A nonresident who holds a valid commercial driver's license from another state shall not be required to take the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the nonresident commercial driver's license

holder surrenders his or her valid out-of-state commercial driver's license to licensing staff.

**Source:** Laws 1993, LB 420, § 9; Laws 1996, LB 938, § 3; Laws 1999, LB 704, § 35; Laws 2001, LB 387, § 9; Laws 2005, LB 76, § 13; Laws 2014, LB983, § 37.

**60-4,149.02 Commercial drivers' licenses; driving skills examination; exemption for driver with military commercial motor vehicle experience; conditions and limitations; applicant; certification.**

A commercial driver's license examiner shall not require the driving skills examination for a commercial motor vehicle driver with military commercial motor vehicle experience who is currently licensed at the time of his or her application for a commercial driver's license and may substitute an applicant's driving record in combination with certain driving experience. The department may impose conditions and limitations as allowed under 49 C.F.R. 383 to restrict the applicants from whom the department may accept alternative requirements for the driving skills examination authorized in section 60-4,155. Such conditions and limitations shall require at least the following:

(1) An applicant must certify that, during the two-year period immediately prior to applying for a commercial driver's license, he or she:

(a) Has not had more than one operator's license, except for a military operator's license;

(b) Has not had any operator's license suspended, revoked, or canceled;

(c) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in 49 C.F.R. 383.51(b);

(d) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in 49 C.F.R. 383.51(c);

(e) Has not had any conviction for a violation of military, state, or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with any traffic accident; and

(f) Has no record of an accident in which he or she was at fault; and

(2) An applicant must provide evidence and certify that he or she:

(a) Is regularly employed or was regularly employed within the last ninety days in a military position requiring operation of a commercial motor vehicle;

(b) Was exempted from the commercial driver's license requirements in 49 C.F.R. 383.3(c); and

(c) Was operating a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate, for at least two years immediately preceding discharge from the military.

**Source:** Laws 2014, LB983, § 40.

**60-4,150 Commercial driver's license; CLP-commercial learner's permit; replacement; application; delivery.**

(1) Any person holding a commercial driver's license or CLP-commercial learner's permit who loses his or her license or permit, who requires issuance of a replacement license or permit because of a change of name or address, or whose license or permit is mutilated or unreadable may obtain a replacement commercial driver's license or CLP-commercial learner's permit by filing an

application pursuant to this section and by furnishing proof of identification in accordance with section 60-4,144. Any person seeking a replacement license or permit for such reasons, except because of a change of name, may also obtain a replacement license or permit by submitting an electronic application pursuant to section 60-4,148.01.

(2) An application for a replacement license or permit because of a change of name or address shall be made within sixty days after the change of name or address.

(3) A replacement commercial driver's license or CLP-commercial learner's permit issued pursuant to this section shall be delivered to the applicant as provided in section 60-4,113 after department personnel or 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. Replacement commercial drivers' licenses or CLP-commercial learners' permits issued pursuant to this section shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses or permits as provided for by section 60-4,149.

(4) Upon issuance of any replacement commercial driver's license or permit, the commercial driver's license or CLP-commercial learner's permit for which the replacement license or permit is issued shall be void. Each replacement commercial driver's license or CLP-commercial learner's permit shall be issued with the same expiration date as the license or permit for which the replacement is issued. The replacement license or permit shall also state the new issuance date.

**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; Laws 2014, LB777, § 10; Laws 2014, LB983, § 38; Laws 2016, LB311, § 20; Laws 2016, LB977, § 19.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB311, section 20, with LB977, section 19, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB977 became operative July 21, 2016.

**60-4,151 Commercial driver's license; RCDL-restricted commercial driver's license; SEP-seasonal permit; CLP-commercial learner's 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. The commercial driver's license shall be marked Nondomiciled if the license is a nondomiciled commercial driver's license.

(b) The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The RCDL-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 RCDL-restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The SEP-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 SEP-seasonal

permit shall be valid only when held in conjunction with an RCDL-restricted commercial driver's license.

(4) The CLP-commercial learner's permit shall be conspicuously marked Nebraska Commercial Learner's Permit and shall be, to the maximum extent practicable, tamper and forgery proof. The permit shall also be marked Non-domiciled if the permit is a nondomiciled CLP-commercial learner's permit.

**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; Laws 2014, LB983, § 39.

#### **60-4,153 Issuance of license; department; duties.**

Prior to the issuance of any original or renewal commercial driver's license, the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, or the issuance of a CLP-commercial learner's permit, the department shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license or CLP-commercial learner's permit 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 or commercial learner's permit issued by any other state, whether such license or permit 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; Laws 2014, LB983, § 41.

#### **60-4,154 Issuance of license or permit; director notify Commercial Driver License Information System; department; post information.**

(1) Prior to the issuance of any original or renewal commercial driver's license, the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, or the issuance of a CLP-commercial learner's permit, 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) 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; Laws 2014, LB983, § 42.

**60-4,156 Repealed. Laws 2014, LB983, § 69.**

**60-4,157 Driving skills examination; waiver based on third-party tester; licensure in another state; report of examination results.**

(1) A commercial driver's license examiner may waive the driving skills examination when an applicant presents evidence, on a form to be prescribed by the director, that he or she has successfully passed a driving skills examination administered by a third-party tester.

(2) A third-party skills test examiner may administer a driving skills examination to an applicant who has taken training in this state but is to be licensed in another state. The driving skills examination results shall be reported by the third-party skills test examiner to the department. The department shall transmit electronically the driving skills examination results directly from this state to the licensing state in an efficient and secure manner to be determined by the director.

(3) A third-party skills test examiner who is also a skills instructor either as part of a school, training program, or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner.

**Source:** Laws 1989, LB 285, § 107; Laws 2014, LB983, § 43.

**60-4,158 Third-party testers; applicant; criminal history record check; fingerprints; rules and regulations; fees; violation; penalty.**

(1) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department. Such rules and regulations shall substantially comply with the requirements of 49 C.F.R. 383.75. A third-party skills test examiner employed by a certified third-party tester is not 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.

(2)(a) An applicant to be certified as a third-party skills test examiner shall provide fingerprints to the Nebraska State Patrol. 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 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 department that includes the criminal history record information concerning the applicant. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(b) A third-party skills test examiner shall be subject to a national criminal history record information check.

(c) The department shall maintain a record of the results of the criminal background check and third-party skills test examiner test training and certification of all third-party skills test examiners.

(d) The department shall rescind the certification to administer commercial driver's license tests of all third-party skills test examiners who:

(i) Do not successfully complete the required refresher training every four years; or

(ii) Do not pass a national criminal history record information check. Criteria for not passing the criminal background check must include at least the following:

(A) Any felony conviction within the last ten years; or

(B) Any conviction involving fraudulent activities.

(3) A certification to conduct third-party testing shall be valid for two years, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester. The department shall remit the fees collected to the State Treasurer for credit to the General Fund.

(4) Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his or her certification revoked by the department.

**Source:** Laws 1989, LB 285, § 108; Laws 1999, LB 704, § 37; Laws 2014, LB983, § 44.

**60-4,159 Licensee; permit holder; convictions; disqualifications; notification required; violation; penalty.**

(1) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department shall, within ten days after the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state.

(2) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(3) Any person possessing a commercial driver's license or CLP-commercial learner's permit issued by the department whose commercial driver's license or CLP-commercial learner's permit is suspended, revoked, or canceled by any state, who loses the privilege to operate a commercial motor vehicle in any state for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(4) Any person who fails to provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 109; Laws 2005, LB 76, § 14; Laws 2014, LB983, § 45.

**60-4,160 Refusal or denial of application; notice; appeal.**

Written notice shall be delivered to any applicant whose application for a commercial driver's license or CLP-commercial learner's permit is refused or denied for cause. The applicant shall have a right to an immediate appeal to the director upon receipt of such notice. The director shall hear the appeal and render a prompt finding not later than ten days after receipt of the appeal.

**Source:** Laws 1989, LB 285, § 110; Laws 2014, LB983, § 46.

**60-4,162 Employment as driver; employer; duties; violation; penalty.**

(1) Each employer shall require prospective applicants for employment as a driver of a commercial motor vehicle to provide the information required by section 60-4,161.

(2) No employer may knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current commercial learner's permit or commercial driver's license or does not have a commercial learner's permit or commercial driver's license with the proper class or endorsements. An employer may not use a driver to operate a commercial motor vehicle who violates any restriction on the driver's commercial learner's permit or commercial driver's license;

(b) During any period in which the driver has a commercial learner's permit or commercial driver's license disqualified by a state, has lost the right to operate a commercial motor vehicle in a state, or has been disqualified from operating a commercial motor vehicle;

(c) During any period in which the driver has more than one commercial learner's permit or commercial driver's license;

(d) During any period in which the driver, the commercial motor vehicle he or she is operating, or the motor carrier operation is subject to an out-of-service order; or

(e) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.

(3) Any employer who violates this section shall, upon conviction, be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 285, § 112; Laws 2002, LB 499, § 2; Laws 2014, LB983, § 47.

**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 or commercial learner's permit 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 or commercial learner's permit and the petitioner's 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; Laws 2014, LB983, § 48.

**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.

**60-4,168 Disqualification; when.**

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from operating 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) Operating 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, operating any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Operating 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 operated by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle operated 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, operating a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from operating 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 operating a commercial motor vehicle for three years.



(3) A person shall be disqualified from operating 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 operating 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 operating 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) A person shall be disqualified from operating a commercial motor vehicle for at least one year if, on or after July 8, 2015, the person has been convicted of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license.

(7) If the department receives credible information that a CLP-commercial learner's permit holder or a commercial driver's license holder is suspected, but has not been convicted, on or after July 8, 2015, of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license, the department must require the driver to retake the skills and knowledge tests. Within thirty days after receiving notification from the department that retesting is necessary, the affected CLP-commercial learner's permit holder or commercial driver's license holder must make an appointment or otherwise schedule to take the next available test. If the CLP-commercial learner's permit holder or commercial driver's license holder fails to make an appointment within thirty days, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the driver fails either the knowledge or skills test or does not take the test, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the holder of a CLP-commercial learner's permit or commercial driver's license has had his or her CLP-commercial learner's permit or commercial driver's license disqualified, he or she must reapply for a CLP-commercial learner's permit or commercial driver's license under department procedures applicable to all applicants for a CLP-commercial learner's permit or commercial driver's license.

(8) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(9) 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.

(10) 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, operating a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license in the operator's possession;

(h) Beginning September 30, 2005, operating 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;

(i) Beginning October 27, 2013, texting while driving as described in section 60-6,179.02; and

(j) Using a handheld mobile telephone 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; Laws 2014, LB983, § 49; Laws 2016, LB311, § 21; Laws 2016, LB666, § 8.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB311, section 21, with LB666, section 8, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB666 became effective July 21, 2016.

#### **60-4,169 Revocation; when.**

Whenever it comes to the attention of the director that any person when operating a motor vehicle has, based upon the records of the director, been convicted of or administratively determined to have committed an offense for which disqualification is required pursuant to section 60-4,146.01, 60-4,168, or 60-4,168.01, the director shall summarily revoke (1) the commercial driver's license or CLP-commercial learner's permit and privilege of such person to operate a commercial motor vehicle in this state or (2) the privilege, if such person is a nonresident, of operating a commercial motor vehicle in this state. Any revocation ordered by the director pursuant to this section shall commence on the date of the signing of the order of revocation or the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is later, unless the order of the court requires the jail time and the revocation to run concurrently.

**Source:** Laws 1989, LB 285, § 119; Laws 1993, LB 31, § 19; Laws 1993, LB 420, § 12; Laws 1996, LB 323, § 12; Laws 2001, LB 38, § 37; Laws 2010, LB805, § 9; Laws 2014, LB983, § 50.

#### **60-4,170 Revocation; notice; failure to surrender license or permit; 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, CLP-commercial learner's permit, or privilege to operate a commercial motor vehicle has been revoked that such license, permit, 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 or CLP-commercial learner's permit 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. Any person refusing or failing to surrender a commercial driver's license or CLP-commercial learner's permit 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; Laws 2014, LB983, § 51.

**60-4,171 Issuance of Class O or M operator's license; reinstatement of commercial driver's license or CLP-commercial learner's permit; when.**

(1) Following any period of revocation ordered by a court, a resident who has had a commercial driver's license or CLP-commercial learner's permit 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 or CLP-commercial learner's permit 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 or CLP-commercial learner's permit reinstated. The applicant shall (a) apply to the department and meet the requirements of section 60-4,144, (b) take the commercial driver's license knowledge and driving skills examinations prescribed pursuant to section 60-4,155 if applying for a commercial driver's license, (c) certify pursuant to section 60-4,144.01 and meet the applicable medical requirements for such certification, (d) be subject to a check of his or her driving record, (e) pay the fees specified in section 60-4,115 and a reinstatement fee as provided in section 60-499.01, and (f) 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; Laws 2014, LB983, § 52.

**60-4,172 Nonresident licensee or permit holder; conviction within state; director; duties.**

(1) Within ten days after receiving an abstract of conviction of any nonresident who holds a commercial learner's permit or commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident who holds a commercial learner's permit or commercial driver's license and the Commercial Driver License Information System of such conviction.

(2)(a) Within ten days after disqualifying a nonresident who holds a commercial learner's permit or commercial driver's license or canceling, revoking, or suspending the commercial learner's permit or commercial driver's license

held by a nonresident, for a period of at least sixty days, the department shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such action.

(b) The notification shall include both the disqualification and the violation that resulted in the disqualification, cancellation, revocation, or suspension. The notification and the information it provides shall be recorded on the driver's record.

(3) Within ten days after receiving an abstract of conviction of any nonresident who holds a commercial learner's permit or commercial driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in any type of motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident and the Commercial Driver License Information System of such conviction.

(4) Within ten days after receiving an abstract of conviction of any nonresident who holds a driver's license for any violation of state law or local ordinance related to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle operated in this state, the director shall notify the driver licensing authority which licensed the nonresident.

**Source:** Laws 1989, LB 285, § 122; Laws 2003, LB 562, § 19; Laws 2014, LB983, § 53.

#### (j) STATE IDENTIFICATION CARDS

##### **60-4,180 State identification card; issuance authorized; prior cards; invalid.**

Any person who is a resident of this state may obtain a state identification card with a digital image of the person included. State identification cards shall be issued in the manner provided in section 60-4,181. Any identification card issued under prior law prior to January 1, 1990, shall be invalid after such date.

**Source:** Laws 1989, LB 284, § 3; Laws 1993, LB 201, § 5; Laws 2001, LB 574, § 28; Laws 2014, LB777, § 11.

#### Cross References

**Application**, see section 60-484.

**Duplicate or replacement card**, see section 60-4,120.

**Expiration**, see section 60-490.

**Photograph affixed to card**, see section 60-4,119.

**Prohibited acts**, see section 60-491.

**Renewal procedure**, see section 60-4,122.

**Violations, penalties**, see section 60-491.

##### **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 sections 60-484 and 60-484.04. The form of the state identification card shall comply with section 60-4,117. The applicant shall present an issuance certificate to the county treasurer for a state identification card. Department personnel or 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 information presented by the applicant 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 information presented by the applicant 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) 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; Laws 2016, LB311, § 22; Laws 2016, LB666, § 9.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB311, section 22, with LB666, section 9, to reflect all amendments.

**Note:** Changes made by LB311 became effective March 4, 2016. Changes made by LB666 became effective July 21, 2016.

#### (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 subsection (1) or (3) of section 60-6,179.02 - 3 points;
- (14) Using a handheld mobile telephone in violation of subsection (2) or (4) of section 60-6,179.02 - 3 points;
- (15) Unlawful obstruction or interference of the view of an operator in violation of section 60-6,256 - 1 point;
- (16) A violation of subsection (1) of section 60-6,175 - 3 points; and
- (17) 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 (17) of this section does not include violations involving an occupant protection system or a three-point safety belt 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 as defined in section 60-611 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; Laws 2014, LB983, § 54; Laws 2015, LB95, § 8; Laws 2015, LB231, § 26.

**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.

#### (I) VETERAN NOTATION

**60-4,189 Operator's license; state identification card; notation of word "veteran"; Department of Motor Vehicles; duties; replacement license or card.**

(1) An operator's license or a state identification card shall include a notation of the word "veteran" on the front of the license or card as directed by the department if the individual applying for such license or card is eligible for the license or card and (a) has served on active duty in the armed forces of the United States, other than active duty for training, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from such service, (b) registers with the Department of Veterans' Affairs pursuant to section 80-414 as verification of such service, and (c) indicates on the application under section 60-484 his or her wish to include such notation on his or her license or card.

(2) The Department of Motor Vehicles shall consult the registry established pursuant to section 80-414 before placing the notation of the word "veteran" on the operator's license or state identification card issued to the applicant. Such notation shall not be authorized unless the registry verifies the applicant's eligibility. If the Director of Motor Vehicles discovers evidence of fraud in an application under this section, the director may summarily cancel the license or state identification card and send notice of the cancellation to the licensee or cardholder. If the Department of Motor Vehicles has information that an individual is no longer eligible for the notation, the department may summarily cancel the license and send notice of the cancellation to the licensee or cardholder. The notation shall not be restored until the Department of Motor Vehicles subsequently verifies the applicant's eligibility by consulting the registry of the Department of Veterans' Affairs.

(3) The notation authorized in subsection (1) of this section shall continue to be included on the license or card upon renewal of such license or card if the licensee or cardholder, at the time of renewal, indicates the desire to include the notation.

(4) An individual may obtain a replacement operator's license or state identification card to add or remove the notation authorized in subsection (1) of this section by applying to the Department of Motor Vehicles for such replacement license or card and, if adding the notation, by meeting the requirements of subsection (1) of this section. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

**Source:** Laws 2013, LB93, § 4.

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, 2016;

(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, mini-trucks, 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, (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, and (k) bicycles as defined in section 60-611;

(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; Laws 2015, LB95, § 9; Laws 2016, LB929, § 9.

Effective date March 10, 2016.

(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.

#### (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.

##### **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.

## ARTICLE 6

### NEBRASKA RULES OF THE ROAD

#### (a) GENERAL PROVISIONS

Section	
60-601.	Rules, how cited.
60-605.	Definitions, where found.
60-610.01.	Autocycle, defined.
60-611.	Bicycle, defined.

## **MOTOR VEHICLES**

### Section

- 60-622.01. Golf car vehicle, defined.
- 60-628.01. Low-speed vehicle, defined.
- 60-636.01. Minitruck, defined.
- 60-637. Moped, defined.
- 60-638. Motor vehicle, defined.
- 60-639. Motorcycle, defined.
- 60-640. Motor-driven cycle, defined.
- 60-658. School bus, defined.

### (b) POWERS OF STATE AND LOCAL AUTHORITIES

- 60-681. Highways, travel on; regulation by local authorities; when authorized; signs.

### (d) ACCIDENTS AND ACCIDENT REPORTING

- 60-697. Accident; driver's duty; penalty.
- 60-698. Accident; failure to stop; penalty.

### (e) APPLICABILITY OF TRAFFIC LAWS

- 60-6,109. Drivers to exercise due care with pedestrian; audible signal.

### (g) USE OF ROADWAY AND PASSING

- 60-6,133. Overtaking and passing rules; vehicles proceeding in same direction.
- 60-6,144. Restrictions on use of controlled-access highway.

### (i) PEDESTRIANS

- 60-6,152.01. Person operating wheelchair; rights and duties applicable to pedestrian.
- 60-6,153. Pedestrians' right-of-way in crosswalk; traffic control devices.
- 60-6,154. Crossing at other than crosswalks; yield right-of-way.

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- 60-6,175. School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.

### (m) MISCELLANEOUS RULES

- 60-6,179.01. Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.
- 60-6,179.02. Operator of commercial motor vehicle; operator of certain passenger motor vehicle; operator of school bus; texting while driving prohibited; exception; use of handheld mobile telephone while driving prohibited; exception; violation; penalty.

### (o) ALCOHOL AND DRUG VIOLATIONS

- 60-6,196.01. Driving under influence of alcoholic liquor or drug; additional penalty.
- 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.
- 60-6,197.01. Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.
- 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.
- 60-6,197.03. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.
- 60-6,197.05. Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.
- 60-6,197.06. Operating motor vehicle during revocation period; penalties.
- 60-6,197.09. Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.
- 60-6,197.10. Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.

## NEBRASKA RULES OF THE ROAD

- Section  
60-6,198. Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.
- 60-6,209. License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.
- 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.
- 60-6,211.08. Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.
- 60-6,211.11. Prohibited acts relating to ignition interlock device; violation; penalty.
- (q) LIGHTING AND WARNING EQUIPMENT
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- 60-6,226. Brake and turnsignal light requirements; exceptions; signaling requirements.
- 60-6,230. Lights; rotating or flashing; colored lights; when permitted.
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- (t) WINDSHIELDS, WINDOWS, AND MIRRORS
- 60-6,256. Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.
- (u) OCCUPANT PROTECTION SYSTEMS AND THREE-POINT SAFETY BELT SYSTEMS
- 60-6,265. Occupant protection system and three-point safety belt system, defined.
- 60-6,266. Occupant protection system; 1973 year model and later motor vehicles; requirements; three-point safety belt system; violation; penalty.
- 60-6,267. Use of restraint system, occupant protection system, or three-point safety belt system; when; information and education program.
- 60-6,268. Use of restraint system or occupant protection system; violations; penalty; enforcement; when.
- 60-6,270. Occupant protection system; three-point safety belt system; use required; when; exceptions.
- 60-6,272. Occupant protection system; three-point safety belt system; violation; penalty.
- 60-6,273. Occupant protection system; three-point safety belt system; violation; evidence; when admissible.
- (y) SIZE, WEIGHT, AND LOAD
- 60-6,288. Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.
- 60-6,288.01. Person moving certain buildings or objects; notice required; contents; violation; penalty.
- 60-6,289. Vehicles; height; limit; height of structure; damages.
- 60-6,290. Vehicles; length; limit; exceptions.
- 60-6,291. Violations; penalty.
- 60-6,294. Vehicles; weight limit; further restrictions by department, when authorized; axle load; load limit on bridges; overloading; liability.
- 60-6,297. Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.
- 60-6,298. Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.
- 60-6,299. Permit to move building; limitations; application; Department of Roads; rules and regulations; violation; penalty.
- 60-6,300. Vehicles; excess load prohibited; exception; violation; penalty.
- 60-6,304. Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.

§ 60-601

**MOTOR VEHICLES**

Section

(cc) SPECIAL RULES FOR BICYCLES

60-6,317. Bicycles on roadways and bicycle paths; general rules; regulation by local authority.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,348. Minibikes and off-road designed vehicles; use; emergencies; parades.

60-6,349. Minibikes and similar vehicles; sale; notice.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355. All-terrain vehicle, defined; utility-type vehicle, defined.

60-6,356. All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

60-6,378. Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

60-6,380. Low-speed vehicle; restrictions on use.

(ll) SPECIAL RULES FOR GOLF CAR VEHICLES

60-6,381. Golf car vehicles; city, village, or county; operation authorized; restrictions; liability insurance.

(mm) FARM EQUIPMENT DEALERS

60-6,382. Farm equipment dealers; farm equipment haulers act as representative; conditions; signed statement; contents.

60-6,383. Implement of husbandry; weight and load limitations; operation restrictions.

(a) GENERAL PROVISIONS

**60-601 Rules, how cited.**

Sections 60-601 to 60-6,383 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; Laws 2014, LB1039, § 1; Laws 2015, LB231, § 27; Laws 2015, LB641, § 1; Laws 2016, LB977, § 20.

Operative date July 21, 2016.

**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; Laws 2015, LB231, § 28.

**60-610.01 Autocycle, defined.**

Autocycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) in which the operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top and is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and for each occupant a manufacturer-installed three-point safety belt system, (4) having antilock brakes, and (5) designed to be controlled with a steering wheel and pedals.

**Source:** Laws 2015, LB231, § 29.

**60-611 Bicycle, defined.**

Bicycle shall mean (1) every device propelled solely by human power, upon which any person may ride, and having two tandem wheels either of which is more than fourteen inches in diameter or (2) a device with two or three wheels, fully operative pedals for propulsion by human power, and an electric motor with a capacity not exceeding seven hundred fifty watts which produces no more than one brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than twenty miles per hour on level ground.

**Source:** Laws 1993, LB 370, § 107; Laws 2015, LB95, § 10.

**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.

**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, 2016.

**Source:** Laws 2011, LB289, § 31; Laws 2016, LB929, § 10.

Effective date March 10, 2016.

**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.

**60-637 Moped, defined.**

Moped shall mean a device with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the device at a maximum design speed of no more than thirty miles per hour on level ground.

**Source:** Laws 1993, LB 370, § 133; Laws 2015, LB95, § 11.

**60-638 Motor vehicle, defined.**

Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except bicycles, mopeds, self-propelled chairs used by persons who are disabled, and electric personal assistive mobility devices.

**Source:** Laws 1993, LB 370, § 134; Laws 2002, LB 1105, § 451; Laws 2015, LB95, § 12.

**60-639 Motorcycle, defined.**

Motorcycle shall mean every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, excluding autocycles, tractors, and electric personal assistive mobility devices.

**Source:** Laws 1993, LB 370, § 135; Laws 2002, LB 1105, § 452; Laws 2015, LB231, § 30.

**60-640 Motor-driven cycle, defined.**

Motor-driven cycle shall mean every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower as measured at the drive shaft, mopeds, and every bicycle with motor attached except for a bicycle as described in subdivision (2) of section 60-611. Motor-driven cycle shall not include an electric personal assistive mobility device.

**Source:** Laws 1993, LB 370, § 136; Laws 2002, LB 1105, § 453; Laws 2015, LB95, § 13.

**60-658 School bus, defined.**

School bus shall mean any motor vehicle which complies with the general design, equipment, and color requirements adopted and promulgated pursuant to subdivision (12) of section 79-318 and which is used to transport students to or from school or in connection with school activities but shall not include buses operated by common carriers in urban transportation of school students.

**Source:** Laws 1993, LB 370, § 154; Laws 1993, LB 575, § 5; Laws 2009, LB549, § 3; Laws 2013, LB222, § 20.



## (b) POWERS OF STATE AND LOCAL AUTHORITIES

**60-681 Highways, travel on; regulation by local authorities; when authorized; signs.**

Local authorities may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period not to exceed one hundred eighty days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which such local authorities are responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. Such local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.

Local authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

**Source:** Laws 1931, c. 110, § 35, p. 316; C.S.Supp.,1941, § 39-1166; R.S.1943, § 39-770; R.S.1943, (1988), § 39-6,189; Laws 1993, LB 370, § 177; Laws 2016, LB977, § 21.  
Operative date July 21, 2016.

## (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.

#### (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.

#### **60-6,144 Restrictions on use of controlled-access highway.**

Use of a freeway and entry thereon by the following shall be prohibited at all times except by permit from the Department of Roads or from the local authority in the case of freeways not under the jurisdiction of the department:

- (1) Pedestrians except in areas specifically designated for that purpose;
- (2) Hitchhikers or walkers;
- (3) Vehicles not self-propelled;
- (4) Bicycles, motor-driven cycles, motor scooters not having motors of more than ten horsepower, and electric personal assistive mobility devices;
- (5) Animals led, driven on the hoof, ridden, or drawing a vehicle;
- (6) Funeral processions;
- (7) Parades or demonstrations;
- (8) Vehicles, except emergency vehicles, unable to maintain minimum speed as provided in the Nebraska Rules of the Road;
- (9) Construction equipment;
- (10) Implements of husbandry, whether self-propelled or towed, except as provided in section 60-6,383;
- (11) Vehicles with improperly secured attachments or loads;
- (12) Vehicles in tow, when the connection consists of a chain, rope, or cable, except disabled vehicles which shall be removed from such freeway at the nearest interchange;
- (13) Vehicles with deflated pneumatic, metal, or solid tires or continuous metal treads except maintenance vehicles;
- (14) Any person standing on or near a roadway for the purpose of soliciting or selling to an occupant of any vehicle; or
- (15) Overdimensional vehicles.

**Source:** Laws 1973, LB 45, § 33; R.S.1943, (1988), § 39-633; Laws 1993, LB 370, § 240; Laws 1993, LB 575, § 8; Laws 2002, LB 1105, § 457; Laws 2006, LB 853, § 18; Laws 2016, LB977, § 23.  
Operative date July 21, 2016.

#### (i) PEDESTRIANS

#### **60-6,152.01 Person operating wheelchair; rights and duties applicable to pedestrian.**

Any disabled person operating a manual or motorized wheelchair on a sidewalk or across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances.

**Source:** Laws 2015, LB641, § 2.

**60-6,153 Pedestrians' right-of-way in crosswalk; traffic control devices.**

(1) Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within a crosswalk who is in the lane in which the driver is proceeding or is in the lane immediately adjacent thereto by bringing his or her vehicle to a complete stop.

(2) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(4) At or adjacent to the intersection of two highways at which a path designated for bicycles and pedestrians is controlled by a traffic control signal, a pedestrian who lawfully enters a highway where the path crosses the highway shall have the right-of-way within the crossing with respect to vehicles and bicycles.

(5) The Department of Roads and local authorities in their respective jurisdictions may, after an engineering and traffic investigation, designate unmarked crosswalk locations where pedestrian crossing is prohibited or where pedestrians shall yield the right-of-way to vehicles. Such restrictions shall be effective only when traffic control devices indicating such restrictions are in place.

**Source:** Laws 1973, LB 45, § 42; Laws 1979, LB 395, § 1; R.S.1943, (1988), § 39-642; Laws 1993, LB 370, § 249; Laws 2016, LB716, § 1.

Effective date July 21, 2016.

**Cross References**

**Failure to yield to pedestrian**, assessment of points against operator's license, see section 60-4,182 et seq.

**60-6,154 Crossing at other than crosswalks; yield right-of-way.**

(1) Every pedestrian who crosses a roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian who crosses a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(4) Where a path designated for bicycles and pedestrians crosses a highway, a pedestrian who is in the crossing in accordance with the traffic control device shall have the right-of-way within the crossing with respect to vehicles and bicycles.

(5) No pedestrian shall cross a roadway intersection diagonally unless authorized by traffic control devices, and when authorized to cross diagonally,

pedestrians shall cross only in accordance with the traffic control devices pertaining to such crossing movements.

(6) Local authorities and the Department of Roads, by erecting appropriate official traffic control devices, may, within their respective jurisdictions, prohibit pedestrians from crossing any roadway in a business district or any designated highway except in a crosswalk.

**Source:** Laws 1973, LB 45, § 43; R.S.1943, (1988), § 39-643; Laws 1993, LB 370, § 250; Laws 2016, LB716, § 2.  
Effective date July 21, 2016.

#### (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 outside of the corporate limits of any city or village or on any part of the state highway system within the corporate limits of a city or village, 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; Laws 2013, LB500, § 1.

#### (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) Commercial motor vehicle has the same meaning as in section 75-362;

(b)(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

(c) 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; Laws 2014, LB983, § 55.

**60-6,179.02 Operator of commercial motor vehicle; operator of certain passenger motor vehicle; operator of school bus; texting while driving prohibited; exception; use of handheld mobile telephone while driving prohibited; exception; violation; penalty.**

(1)(a) Except as otherwise provided in subdivision (1)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall engage in texting while driving such vehicle.

(b) Texting while driving is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(2)(a) Except as otherwise provided in subdivision (2)(b) of this section, no operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, shall use a handheld mobile telephone while driving and no motor carrier shall allow or require its operators to use a handheld mobile telephone while driving such vehicle.

(b) Using a handheld mobile telephone is permissible by an operator of a commercial motor vehicle or a motor vehicle designed or used to transport between nine and fifteen passengers, including the driver, not for direct

compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle, when necessary to communicate with law enforcement officials or other emergency services.

(3)(a) Except as otherwise provided in subdivision (3)(b) of this section, no operator of a school bus shall engage in texting during school bus operations.

(b) Texting while driving is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(4)(a) Except as otherwise provided in subdivision (4)(b) of this section, no operator of a school bus shall use a handheld mobile telephone during school bus operations.

(b) Using a handheld mobile telephone is permissible by an operator of a school bus during school bus operations when necessary to communicate with law enforcement officials or other emergency services.

(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 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.

(6) For purposes of this section:

(a) Commercial motor vehicle has the same meaning as in section 75-362;

(b) Driving means operating a commercial motor vehicle, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle 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;

(c) 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;

(d) Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service as defined in regulations of the Federal Communications Commission, 47 C.F.R. 20.3. Mobile telephone does not include two-way or citizens band radio services;

(e) School bus operations means the use of a school bus to transport school children or school personnel;

(f)(i) Texting means manually entering alphanumeric text into, or reading text from, an electronic device. This action 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 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; and

(g) Use a handheld mobile telephone means:

(i) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(ii) Dialing or answering a mobile telephone by pressing more than a single button; or

(iii) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position and restrained by a seat belt that is installed in accordance with 49 C.F.R. 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

**Source:** Laws 2012, LB751, § 45; Laws 2014, LB983, § 56.

#### (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.

**60-6,197.01 Driving while license has been revoked; driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles; additional restrictions authorized.**

(1) Upon conviction for a violation described in section 60-6,197.06 or a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each motor vehicle

owned or operated by the convicted person if he or she was sentenced to an operator's license revocation of at least one year. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subdivision and shall retain the ignition interlock permit and ignition interlock device for not less than a one-year period or the period of revocation ordered by the court, whichever is longer. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

**Source:** Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB736, § 7; Laws 2009, LB497, § 5; Laws 2010, LB924, § 3; Laws 2013, LB158, § 3.

**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 eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and have an ignition interlock device installed on any motor vehicle he or she owns or operates for at least one year. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivi-

sion, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The 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 eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The 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 eighteen months 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 eighteen months 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 and that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period issued pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The 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 IIA felony, with a minimum sentence of one year of 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 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 IIA 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; Laws 2013, LB158, § 4; Laws 2015, LB605, § 77; Laws 2016, LB1094, § 32.  
Effective date April 20, 2016.

**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.

**60-6,197.06 Operating motor vehicle during revocation period; penalties.**

(1) Unless otherwise provided by law pursuant to an ignition interlock permit, any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to section 28-306, section 60-698, subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03, or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV 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.

(2) If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, and operates a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to such conviction, such person shall be guilty of a Class IIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for an additional 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.

**Source:** Laws 2004, LB 208, § 16; Laws 2006, LB 925, § 12; Laws 2009, LB497, § 9; Laws 2015, LB605, § 78; Laws 2016, LB275, § 1. Effective date July 21, 2016.

**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.

**60-6,209 License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.**

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles not more often than once per calendar year, on forms prescribed by the department, requesting the department to

make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application and a nonrefundable application fee of one hundred dollars, the Director of Motor Vehicles shall review the application and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription;

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason; and

(f) Such person has agreed that, if the Board of Pardons reinstates such person's eligibility to apply for an ignition interlock permit, such person must provide proof, to the satisfaction of the department, that an ignition interlock device has been installed and is maintained on one or more motor vehicles such person operates for the duration of the original fifteen-year revocation period and such person must operate only motor vehicles so equipped for the duration of the original fifteen-year revocation period.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery and, if such person is a holder of an

ignition interlock permit, shall be conditioned for the duration of the original revocation period on such person's operation of only motor vehicles equipped with an ignition interlock device. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or an ignition interlock permit or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

**Source:** Laws 1992, LB 291, § 10; R.S.Supp.,1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB736, § 9; Laws 2014, LB998, § 12.

**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, and (c) if the applicant is subject to any required no-drive periods before the ignition interlock permit may be issued.

(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 only an ignition-interlock-equipped motor vehicle.

(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. Money in the Department of Motor Vehicles Ignition Interlock Fund may be used for transfers to the General Fund at the direction of the Legislature. Any money in the Department of Motor Vehicles Ignition Interlock 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; Laws 2013, LB158, § 5; Laws 2013, LB199, § 27.

**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) Except as provided in subsection (2) of this section, any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class I misdemeanor if he or she (a) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (b) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order.

(2) Any person ordered by a court or the Department of Motor Vehicles to operate only motor vehicles equipped with an ignition interlock device is guilty of a Class IV felony if he or she (a)(i) tampers with or circumvents and then operates a motor vehicle equipped with an ignition interlock device installed under the court order or Department of Motor Vehicles order while the order is in effect or (ii) operates a motor vehicle which is not equipped with an ignition interlock device in violation of the court order or Department of Motor Vehicles order and (b) operates the motor vehicle as described in subdivision (a)(i) or (ii) of this subsection when he or she has a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

(3) 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; Laws 2014, LB998, § 13.

(q) LIGHTING AND WARNING EQUIPMENT

**60-6,219 Motor vehicle; autocycle or motorcycle; lights; requirements; prohibited acts.**

(1) Every motor vehicle upon a highway within this state during the period from sunset to sunrise and at any other time when there is not sufficient light to

render clearly discernible persons or vehicles upon the highway at a distance of five hundred feet ahead shall be equipped with lighted headlights and taillights as respectively required in this section for different classes of vehicles.

(2) Every motor vehicle, other than an autocycle, a motorcycle, a road roller, or road machinery, shall be equipped with two or more headlights, at the front of and on opposite sides of the motor vehicle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(3) Every motor vehicle and trailer, other than an autocycle, a motorcycle, a road roller, or road machinery, shall be equipped with one or more taillights, at the rear of the motor vehicle or trailer, exhibiting a red light visible from a distance of at least five hundred feet to the rear of such vehicle.

(4) Every autocycle or motorcycle shall be equipped with at least one and not more than two headlights and with a taillight exhibiting a red light visible from a distance of at least five hundred feet to the rear of such autocycle or motorcycle. The headlights shall comply with the requirements and limitations set forth in sections 60-6,221 and 60-6,223.

(5) The requirement in this section as to the distance from which lights must render obstructions visible or within which lights must be visible shall apply during the time stated in this section upon a straight, level, unlighted highway under normal atmospheric conditions.

(6) It shall be unlawful for any owner or operator of any motor vehicle to operate such vehicle upon a highway unless:

(a) The condition of the lights and electric circuit is such as to give substantially normal light output;

(b) Each taillight shows red directly to the rear, the lens covering each taillight is unbroken, each taillight is securely fastened, and the electric circuit is free from grounds or shorts;

(c) There is no more than one spotlight except for law enforcement personnel, government employees, and public utility employees;

(d) There are no more than two auxiliary driving lights and every such auxiliary light meets the requirements for auxiliary driving lights provided in section 60-6,225;

(e) If equipped with any lighting device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than twenty-five candlepower, such lighting device meets the requirements of subsection (4) of section 60-6,225; and

(f) If equipped with side cowl or fender lights, there are no more than two such lights and each such side cowl or fender light emits an amber or white light.

**Source:** Laws 1931, c. 110, § 43, p. 319; Laws 1935, c. 134, § 8, p. 488; Laws 1939, c. 78, § 4, p. 319; C.S.Supp.,1941, § 39-1174; R.S. 1943, § 39-778; Laws 1955, c. 152, § 1, p. 450; Laws 1957, c. 366, § 6, p. 1249; R.R.S.1943, § 39-778; Laws 1975, LB 11, § 2; Laws 1981, LB 544, § 2; Laws 1987, LB 224, § 6; Laws 1989, LB 283, § 2; R.S.Supp.,1992, § 39-6,138; Laws 1993, LB 370, § 315; Laws 1993, LB 575, § 32; Laws 1995, LB 59, § 2; Laws 2015, LB231, § 31.

## Cross References

Motor-driven cycles, light requirements, see section 60-6,187.

**60-6,226 Brake and turnsignal light requirements; exceptions; signaling requirements.**

(1) Any motor vehicle having four or more wheels which is manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, any autocycle, or any trailer, in use on a highway, shall be equipped with brake and turnsignal lights in good working order.

(2) Motorcycles, motor-driven cycles, motor scooters, bicycles, electric personal assistive mobility devices, vehicles used solely for agricultural purposes, vehicles not designed and intended primarily for use on a highway, and, during daylight hours, fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations shall not be required to have or maintain in working order signal lights required by this section, but they may be so equipped. The operator thereof shall comply with the requirements for utilizing hand and arm signals or for utilizing such signal lights if the vehicle is so equipped.

**Source:** Laws 1993, LB 370, § 322; Laws 1995, LB 59, § 4; Laws 2002, LB 1105, § 458; Laws 2003, LB 238, § 6; Laws 2005, LB 274, § 243; Laws 2015, LB231, § 32.

## Cross References

Hand and arm signals, see sections 60-6,162 and 60-6,163.

**60-6,230 Lights; rotating or flashing; colored lights; when permitted.**

(1) Except as provided in this section and sections 60-6,231 to 60-6,233, no person shall operate any motor vehicle or any equipment of any description on any highway in this state with any rotating or flashing light.

(2) Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this state.

(3) Amber rotating or flashing lights shall be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.

(4) A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.

(5) Blue and amber rotating or flashing lights may be displayed on (a) vehicles when operated by the Department of Roads or any local authority for the inspection, construction, repair, or maintenance of highways, roads, or streets or (b) vehicles owned and operated by any public utility for the construction, maintenance, and repair of utility infrastructure on or near any highway.

**Source:** Laws 1969, c. 327, § 2, p. 1170; C.S.Supp.,1972, § 39-788.01; Laws 1979, LB 127, § 1; R.S.1943, (1988), § 39-6,148; Laws 1993, LB 370, § 326; Laws 1995, LB 59, § 6; Laws 2008, LB196, § 3; Laws 2015, LB181, § 1; Laws 2016, LB977, § 24.  
Operative date July 21, 2016.

**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 AND  
THREE-POINT SAFETY BELT SYSTEMS

**60-6,265 Occupant protection system and three-point safety belt system, defined.**

For purposes of sections 60-6,266 to 60-6,273:

(1) Occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (a) restrains drivers and passengers and (b) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2009, or to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year; and

(2) Three-point safety belt system means a system utilizing a combination of a lap belt and a shoulder belt installed in a motor vehicle which restrains drivers and passengers.

**Source:** Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB239, § 6; Laws 2008, LB756, § 21; Laws 2009, LB331, § 11; Laws 2015, LB231, § 33.

**60-6,266 Occupant protection system; 1973 year model and later motor vehicles; requirements; three-point safety belt system; violation; penalty.**

(1) Every motor vehicle designated by the manufacturer as 1973 year model or later operated on any highway, road, or street in this state, except farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations, autocycles, motorcycles, motor-driven cycles, mopeds, and buses, shall be equipped with an occupant protection system of a type which:

(a) Meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 as such regulations currently exist or as the regulations existed when the occupant protection system was originally installed by the manufacturer; or

(b) If the occupant protection system has been replaced, meets the requirements of 49 C.F.R. 571.208, 571.209, and 571.210 that applied to the originally installed occupant protection system or of a more recently issued version of such regulations. The purchaser of any such vehicle may designate the make or brand of or furnish such occupant protection system to be installed.

(2) Every autocycle shall be equipped with a three-point safety belt system.

(3) Any person selling a motor vehicle in this state not in compliance with this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1963, c. 214, § 1, p. 687; R.R.S.1943, § 39-7,123.05; Laws 1977, LB 41, § 31; Laws 1985, LB 496, § 3; Laws 1992, LB 958, § 8; R.S.Supp.,1992, § 39-6,171; Laws 1993, LB 370, § 362; Laws 2015, LB231, § 34.

**60-6,267 Use of restraint system, occupant protection system, or three-point safety belt 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 or a three-point safety belt 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 or a three-point safety belt 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 autocycles and 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 or a three-point safety belt 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; Laws 2015, LB231, § 35.

**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.

**60-6,270 Occupant protection system; three-point safety belt system; use required; when; exceptions.**

(1) Except as provided in subsection (2) or (3) of this section, no driver shall operate a motor vehicle upon a highway or street in this state unless the driver and each front-seat occupant in the vehicle are wearing occupant protection systems and all occupant protection systems worn are properly adjusted and fastened.

(2) Except as otherwise provided in subsection (3) of this section, no driver shall operate an autocycle upon a highway or street of this state unless the driver is wearing a three-point safety belt system and it is properly adjusted and fastened.

(3) The following persons shall not be required to wear an occupant protection system or a three-point safety belt system:

(a) A person who possesses written verification from a physician that the person is unable to wear an occupant protection system or a three-point safety belt system for medical reasons;

(b) A rural letter carrier of the United States Postal Service while performing his or her duties as a rural letter carrier between the first and last delivery points; and

(c) A member of an emergency medical service while involved in patient care.

(4) For purposes of this section, motor vehicle means a vehicle required by section 60-6,266 to be equipped with an occupant protection system or a three-point safety belt system.

**Source:** Laws 1985, LB 496, § 6; Laws 1992, LB 958, § 6; R.S.Supp.,1992, § 39-6,103.07; Laws 1993, LB 370, § 366; Laws 1993, LB 575, § 23; Laws 1997, LB 138, § 41; Laws 2015, LB231, § 36.

**60-6,272 Occupant protection system; three-point safety belt system; violation; penalty.**

Any person who violates section 60-6,270 shall be guilty of a traffic infraction and shall be fined twenty-five dollars, but no court costs shall be assessed against him or her nor shall any points be assessed against the driving record of such person. Regardless of the number of persons in such vehicle not wearing

an occupant protection system or a three-point safety belt system pursuant to such section, only one violation shall be assessed against the driver of such motor vehicle for each time the motor vehicle is stopped and a violation of such section is found.

**Source:** Laws 1985, LB 496, § 5; Laws 1992, LB 958, § 5; R.S.Supp.,1992, § 39-6,103.06; Laws 1993, LB 370, § 368; Laws 1993, LB 575, § 22; Laws 2015, LB231, § 37.

**60-6,273 Occupant protection system; three-point safety belt system; violation; evidence; when admissible.**

Evidence that a person was not wearing an occupant protection system or a three-point safety belt system at the time he or she was injured shall not be admissible in regard to the issue of liability or proximate cause but may be admissible as evidence concerning mitigation of damages, except that it shall not reduce recovery for damages by more than five percent.

**Source:** Laws 1985, LB 496, § 7; Laws 1992, LB 958, § 7; R.S.Supp.,1992, § 39-6,103.08; Laws 1993, LB 370, § 369; Laws 2015, LB231, § 38.

(y) SIZE, WEIGHT, AND LOAD

**60-6,288 Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.**

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Roads;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is

attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision, the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

- (a) Highways with traffic lanes of ten feet or less;
- (b) Highways upon which are located narrow bridges; and
- (c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

**Source:** Laws 1933, c. 105, § 1, p. 425; C.S.Supp.,1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 220, § 1, p. 693; Laws 1963, c. 221, § 1, p. 697; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp.,1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978, LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp.,1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB 226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB756, § 23; Laws 2014, LB1039, § 3.

#### Cross References

Weighing stations, see sections 60-1301 to 60-1309.

### **60-6,288.01 Person moving certain buildings or objects; notice required; contents; violation; penalty.**

(1) 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.

(2) Proof of the notification required under subsection (1) of this section must be carried by any person moving a building or an object as described in this section.

(3) Any person who fails to comply with the notification requirements of this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 2011, LB164, § 2; Laws 2016, LB973, § 3.  
Effective date July 21, 2016.

**60-6,289 Vehicles; height; limit; height of structure; damages.**

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers or their representatives as authorized under section 60-6,382 shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met;

(e) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(f) Vehicles with a baled livestock forage load that comply with subsection (4) of section 60-6,305 when the overall height does not exceed fifteen feet, six inches.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

**Source:** Laws 1933, c. 105, § 2, p. 425; C.S.Supp.,1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp.,1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB756, § 24; Laws 2010, LB820, § 1; Laws 2014, LB1039, § 4.

**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;

(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; and

(vi) An articulated bus vehicle operated by a transit authority created pursuant to section 14-1803 may exceed the forty-foot limitation. For purposes of this subdivision (vi), an articulated bus vehicle shall not exceed sixty-five feet in length.

(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 or their representatives as authorized under section 60-6,382 driving, delivering, or picking up farm equipment or imple-

ments 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; Laws 2014, LB1039, § 5; Laws 2016, LB735, § 1.  
Effective date July 21, 2016.

**60-6,291 Violations; penalty.**

Except as provided in subsection (3) of section 60-6,288.01, 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; Laws 2016, LB973, § 4. Effective date July 21, 2016.

**60-6,294 Vehicles; weight limit; further restrictions by department, when authorized; axle load; load limit on bridges; overloading; liability.**

(1) Every vehicle, whether operated singly or in a combination of vehicles, and every combination of vehicles shall comply with subsections (2) and (3) of this section except as provided in sections 60-6,294.01, 60-6,297, and 60-6,383. The limitations imposed by this section shall be supplemental to all other provisions imposing limitations upon the size and weight of vehicles.

(2) No wheel of a vehicle or trailer equipped with pneumatic or solid rubber tires shall carry a gross load in excess of ten thousand pounds on any highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any highway. An axle load shall be defined as the total load transmitted to the highway by all wheels the centers of which may be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle.

(3) No group of two or more consecutive axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, except that the maximum load carried on any group of two or more axles shall not exceed eighty thousand pounds on the National System of Interstate and Defense Highways unless the Director-State Engineer pursuant to section 60-6,295 authorizes a greater weight.

Distance in feet between the extremes of any group of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles					
	Two Axles	Three Axles	Four Axles	Five Axles	Six Axles	Seven Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			

**MOTOR VEHICLES**

16	48,000	52,500	58,000		
17	48,500	53,500	58,500		
18	49,500	54,000	59,000		
19	50,000	54,500	60,000		
20	51,000	55,500	60,500		
21	51,500	56,000	61,000		
22	52,500	56,500	61,500		
23	53,000	57,500	62,500		
24	54,000	58,000	63,000		
25	54,500	58,500	63,500	69,000	
26	55,500	59,500	64,000	69,500	
27	56,000	60,000	65,000	70,000	
28	57,000	60,500	65,500	71,000	
29	57,500	61,500	66,000	71,500	
30	58,500	62,000	66,500	72,000	
31	59,000	62,500	67,500	72,500	
32	60,000	63,500	68,000	73,000	
33		64,000	68,500	74,000	
34		64,500	69,000	74,500	
35		65,500	70,000	75,000	
36		66,000	70,500	75,500	
37		66,500	71,000	76,000	81,500
38		67,500	72,000	77,000	82,000
39		68,000	72,500	77,500	82,500
40		68,500	73,000	78,000	83,500
41		69,500	73,500	78,500	84,000
42		70,000	74,000	79,000	84,500
43		70,500	75,000	80,000	85,000
44		71,500	75,500	80,500	85,500
45		72,000	76,000	81,000	86,000
46		72,500	76,500	81,500	87,000
47		73,500	77,500	82,000	87,500
48		74,000	78,000	83,000	88,000
49		74,500	78,500	83,500	88,500
50		75,500	79,000	84,000	89,000
51		76,000	80,000	84,500	89,500
52		76,500	80,500	85,000	90,500
53		77,500	81,000	86,000	91,000
54		78,000	81,500	86,500	91,500
55		78,500	82,500	87,000	92,000
56		79,500	83,000	87,500	92,500
57		80,000	83,500	88,000	93,000
58			84,000	89,000	94,000
59			85,000	89,500	94,500
60			85,500	90,000	95,000

(4) The distance between axles shall be measured to the nearest foot. When a fraction is exactly one-half foot, the next larger whole number shall be used, except that:

(a) Any group of three axles shall be restricted to a maximum load of thirty-four thousand pounds unless the distance between the extremes of the first and third axles is at least ninety-six inches in fact; and

(b) The maximum gross load on any group of two axles, the distance between the extremes of which is more than eight feet but less than eight feet six inches, shall be thirty-eight thousand pounds.

(5) The limitations of subsections (2) through (4) of this section shall apply as stated to all main, rural, and intercity highways but shall not be construed as inhibiting heavier axle loads in metropolitan areas, except on the National System of Interstate and Defense Highways, if such loads are not prohibited by city ordinance.

(6) The weight limitations of wheel and axle loads as defined in subsections (2) through (4) of this section shall be restricted to the extent deemed necessary by the Department of Roads for a reasonable period when road subgrades or pavements are weak or are materially weakened by climatic conditions.

(7) Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each when the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six, thirty-seven, or thirty-eight feet except as provided in section 60-6,297. Such vehicles shall be subject to section 60-6,301.

(8) If any vehicle crosses a bridge with a total gross load in excess of the posted capacity of such bridge and as a result of such crossing any damage results to the bridge, the owner of such vehicle shall be responsible for all of such damage.

(9) Vehicles equipped with a greater number of axles than provided in the tables in subsection (3) of this section shall be legal if they do not exceed the maximum load upon any wheel or axle, the maximum load upon any group of two or more consecutive axles, and the total gross weight, or any of such weights as provided in subsections (2) and (3) of this section.

(10) Subsections (1) through (9) of this section shall not apply to a vehicle which has been issued a permit pursuant to section 60-6,299, self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met, or an emergency vehicle when the requirements of subdivision (1)(a)(v) of section 60-6,298 are met.

(11) Any two consecutive axles the centers of which are more than forty inches and not more than ninety-six inches apart, measured to the nearest inch between any two adjacent axles in the series, shall be defined as tandem axles, and the gross weight transmitted to the road surface through such series shall not exceed thirty-four thousand pounds. No axle of the series shall exceed the maximum weight permitted under this section for a single axle.

(12) Dummy axles shall be disregarded in determining the lawful weight of a vehicle or vehicle combination for operation on the highway. Dummy axle shall mean an axle attached to a vehicle or vehicle combination in a manner so that it does not articulate or substantially equalize the load and does not carry at least the lesser of eight thousand pounds or eight percent of the gross weight of the vehicle or vehicle combination.

(13) The maximum gross weight limit and the axle weight limit for any vehicle or combination of vehicles equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided in 23 U.S.C. 127(a)(12), as such section existed on July 18, 2008. The additional amount of weight allowed by this subsection shall not exceed four hundred pounds and shall not be con-

strued to be in addition to the five-percent-in-excess-of-maximum-load provision of subdivision (1) of section 60-6,301.

**Source:** Laws 1933, c. 105, § 4, p. 426; Laws 1939, c. 50, § 2, p. 218; C.S.Supp.,1941, § 39-1035; Laws 1943, c. 133, § 2, p. 446; R.S. 1943, § 39-722; Laws 1945, c. 91, § 1, p. 312; Laws 1947, c. 147, § 1, p. 403; Laws 1953, c. 131, § 9, p. 404; Laws 1953, c. 134, § 1, p. 416; Laws 1959, c. 164, § 2, p. 600; Laws 1969, c. 318, § 1, p. 1150; C.S.Supp.,1972, § 39-722; Laws 1980, LB 284, § 4; Laws 1982, LB 383, § 2; Laws 1984, LB 726, § 1; Laws 1985, LB 553, § 6; Laws 1987, LB 132, § 1; Laws 1990, LB 369, § 4; R.S.Supp.,1992, § 39-6,180; Laws 1993, LB 370, § 390; Laws 1995, LB 186, § 1; Laws 1996, LB 1104, § 4; Laws 2000, LB 1361, § 8; Laws 2005, LB 82, § 3; Laws 2008, LB756, § 26; Laws 2016, LB977, § 25.  
Operative date July 21, 2016.

#### Cross References

**Special load restrictions**, rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.  
**Weighing stations**, see sections 60-1301 to 60-1309.

### **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 construction 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 four times for a total number of days not to exceed one hundred fifty 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; Laws 2013, LB117, § 1.

#### 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. Such permit shall clearly state that the applicant is not authorized to manipulate overhead high voltage lines or conductors or other such components, including electric utility poles, and that the applicant shall be guilty of a Class II misdemeanor for any violation of this section or of the notification requirements of section 60-6,288.01. 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 II misdemeanor.

**Source:** Laws 1985, LB 553, § 1; R.S.1943, (1988), § 39-6,181.01; Laws 1993, LB 370, § 395; Laws 2012, LB997, § 5; Laws 2016, LB973, § 5.

Effective date July 21, 2016.

**60-6,300 Vehicles; excess load prohibited; exception; violation; penalty.**

(1) It shall be unlawful to operate upon the public highways of this state any truck, truck-tractor, or trailer that weighs in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds, but this section shall not apply to any truck, truck-tractor, or trailer being operated under a special permit issued pursuant to section 60-6,298 if the vehicle is properly registered pursuant to such section.

(2)(a) Any person operating any truck, truck-tractor, or trailer in violation of this section shall be guilty of a traffic infraction and shall, upon conviction, be fined twenty-five dollars for each one thousand pounds or fraction thereof in excess of the weight allowed to be carried under this section with tolerance.

(b) In lieu of issuing a citation to an operator under subdivision (2)(a) of this section, the Superintendent of Law Enforcement and Public Safety may assess the owner of the vehicle a civil penalty for each violation of this section in an amount equal to twenty-five dollars for each one thousand pounds or fraction thereof in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds. The superintendent shall issue an order imposing a penalty under this subdivision in the same manner as an order issued under section 75-369.04 and any rules and regulations adopted and promulgated under section 75-368 and any applicable federal rules and regulations.

**Source:** Laws 1933, c. 105, § 5, p. 426; Laws 1939, c. 47, § 1, p. 208; Laws 1941, c. 125, § 2, p. 481; C.S.Supp.,1941, § 39-1193; R.S. 1943, § 39-723; Laws 1947, c. 147, § 2(4), p. 406; Laws 1953, c. 134, § 2, p. 418; Laws 1969, c. 318, § 2, p. 1155; C.S.Supp.,1972, § 39-723.03; Laws 1979, LB 287, § 2; Laws 1984, LB 726, § 3; Laws 1986, LB 783, § 1; R.S.1943, (1988), § 39-6,182; Laws 1993, LB 370, § 396; Laws 2013, LB398, § 1.

**60-6,304 Load; contents; requirements; vehicle that contained livestock; spill prohibited; violation; penalty.**

(1)(a) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(b) Except as provided in subsection (2) of this section for a vehicle that contained livestock, but still contains the manure or urine of such livestock, no person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(c) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(d) Any person who violates any provision of this subsection is guilty of a Class IV misdemeanor.

(2)(a) No person operating any vehicle that contained livestock, but still contains the manure or urine of livestock, on any highway located within the corporate limits of a city of the metropolitan class, shall spill manure or urine from the vehicle.

(b) Any person who violates this subsection is guilty of a Class IV misdemeanor and shall be assessed a minimum fine of at least two hundred fifty dollars.

**Source:** Laws 1969, c. 304, § 1, p. 1095; C.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1; Laws 2014, LB174, § 2.

**(cc) SPECIAL RULES FOR BICYCLES****60-6,317 Bicycles on roadways and bicycle paths; general rules; regulation by local authority.**

(1)(a) Any person who operates a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under conditions then existing shall ride as near to the right-hand curb or right-hand edge of the roadway as practicable except when:

(i) Overtaking and passing another bicycle or vehicle proceeding in the same direction;



(ii) Preparing for a left turn onto a private road or driveway or at an intersection;

(iii) Reasonably necessary to avoid conditions that make it unsafe to continue along the right-hand curb or right-hand edge of the roadway, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards;

(iv) Riding upon a lane of substandard width which is too narrow for a bicycle and a vehicle to travel safely side by side within the lane; or

(v) Lawfully operating a bicycle on the paved shoulders of a highway included in the state highway system as provided in section 60-6,142.

(b) Any person who operates a bicycle upon a roadway with a posted speed limit of thirty-five miles per hour or less on which traffic is restricted to one direction of movement and which has two or more marked traffic lanes may ride as near to the left-hand curb or left-hand edge of the roadway as practicable.

(c) Whenever a person operating a bicycle leaves the roadway to ride on the paved shoulder or leaves the paved shoulder to enter the roadway, the person shall clearly signal his or her intention and yield the right-of-way to all other vehicles.

(2) No bicyclist shall suddenly leave a curb or other place of safety and walk or ride into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Any person who operates a bicycle upon a highway shall not ride more than single file except on paths or parts of highways set aside for the exclusive use of bicycles.

(4) A bicyclist riding a bicycle on a sidewalk or across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances but shall yield the right-of-way to pedestrians. Nothing in this subsection relieves the bicyclist or the driver of a vehicle from the duty to exercise care.

(5) A local authority may by ordinance further regulate the operation of bicycles and may provide for the registration and inspection of bicycles.

**Source:** Laws 1973, LB 45, § 90; R.S.1943, (1988), § 39-690; Laws 1993, LB 370, § 413; Laws 1993, LB 575, § 20; Laws 2016, LB716, § 3.

Effective date July 21, 2016.

(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.

**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.

**(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 twelve hundred pounds or less, (iii) travels on three or more nonhighway tires, and (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is seventy-four inches in width or less, (B) is not more than one hundred eighty inches, including the bumper, in length, (C) has a dry weight of two thousand pounds or less, (D) travels on four or more nonhighway tires.

(ii) Utility-type vehicle does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified or retrofitted with after-market parts to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle Registration Act, nor shall such modified or retrofitted vehicles be eligible for registration in any other category of vehicle defined in the 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; Laws 2013, LB223, § 3; Laws 2014, LB814, § 7.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**60-6,356 All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.**

(1) An all-terrain vehicle or a utility-type vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes. The crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted except as provided in subsection (9) of this section. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle or a utility-type vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle or a utility-type vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle or a utility-type vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle or a utility-type vehicle while operating the all-terrain vehicle or a utility-type vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle or a utility-type vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request. When operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles and utility-type vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) The crossing of a highway other than a controlled-access highway with more than two marked traffic lanes shall be permitted by an all-terrain vehicle or a utility-type vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles and utility-type vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of

subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles and utility-type vehicles within the corporate limits of the city or village if the operation is in accordance with subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles and utility-type vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within the unincorporated village.

(9) The crossing of a controlled-access highway with more than two marked traffic lanes shall be permitted by a utility-type vehicle if the operation is in accordance with the operation requirements of subsection (3) of this section and if the following requirements are met:

(a) The crossing is made at an intersection that:

(i) Is controlled by a traffic control signal; or

(ii) For any intersection located outside the corporate limits of a city or village, is controlled by stop signs;

(b) The crossing at such intersection is made in compliance with the traffic control signal or stop signs; and

(c) The crossing at such intersection is specifically authorized as follows:

(i) If such intersection is located within the corporate limits of a city or village, by ordinance of such city or village;

(ii) If such intersection is located within an unincorporated village, by resolution of the county board of the county in which such unincorporated village is located; or

(iii) If such intersection is located outside the corporate limits of a city or village and outside any unincorporated village, by resolution of the county board of the county in which such intersection is located.

**Source:** Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp.,1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB307, § 1; Laws 2010, LB650, § 40; Laws 2015, LB122, § 1.

(ii) **EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE**

**60-6,378 Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.**

(1)(a) A driver in a vehicle on a controlled-access highway approaching or passing a stopped authorized emergency vehicle or road assistance vehicle which makes use of proper audible or visual signals shall proceed with due care and caution as described in subdivision (b) of this subsection.

(b) On a controlled-access highway with at least two adjacent lanes of travel in the same direction on the same side of the highway where a stopped authorized emergency vehicle or road assistance vehicle is using proper audible or visual signals, the driver of the vehicle shall proceed with due care and

caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle unless directed otherwise by a peace officer or other authorized emergency personnel. If moving into another lane is not possible because of weather conditions, road conditions, or the immediate presence of vehicular or pedestrian traffic or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway where such a stopped authorized emergency vehicle or road assistance vehicle is located, the driver of the approaching or passing vehicle shall reduce his or her speed, maintain a safe speed with regard to the location of the stopped authorized emergency vehicle or road assistance vehicle, the weather conditions, the road conditions, and vehicular or pedestrian traffic, and proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

(c) Any person who violates this subsection is guilty of a traffic infraction for a first offense and Class IIIA misdemeanor for a second or subsequent offense.

(2) The Department of Roads shall erect and maintain or cause to be erected and maintained signs giving notice of subsection (1) of this section along controlled-access highways.

(3) Enforcement of subsection (1) of this section shall not be accomplished using simulated situations involving an authorized emergency vehicle or a road assistance vehicle.

(4) This section does not relieve the driver of an authorized emergency vehicle or a road assistance vehicle from the duty to drive with due regard for the safety of all persons using the highway.

(5) For purposes of this section, road assistance vehicle includes a vehicle operated by the Department of Roads, a Nebraska State Patrol motorist assistance vehicle, a United States Department of Transportation registered towing or roadside assistance vehicle, and a utility service vehicle operated by a utility company. A road assistance vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

**Source:** Laws 2009, LB92, § 2; Laws 2013, LB154, § 1.

#### (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.

## (II) SPECIAL RULES FOR GOLF CAR VEHICLES

**60-6,381 Golf car vehicles; city, village, or county; operation authorized; restrictions; liability insurance.**

(1)(a) 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.

(b) A county board may adopt an ordinance pursuant to section 23-187 authorizing the operation of golf car vehicles within the county if the operation is on roads adjacent and contiguous to a golf course.

(c) Any person operating a golf car vehicle as authorized under this subsection 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 person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request.

(d) The restrictions of subsection (2) of this section do not apply to ordinances adopted under this subsection.

(2)(a) A city or village may adopt an ordinance authorizing the operation of golf car vehicles on streets within the corporate limits of the city or village if the operation is (i) between sunrise and sunset and (ii) on streets with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such a highway in order to cross a portion of the highway system which intersects a street as directed in subsection (3) of this section. A city or village may, as part of such ordinance, implement standards for operation of golf car vehicles that are more stringent than the restrictions of this subsection for the safety of the operator and the public.

(b) A county board may adopt an ordinance pursuant to section 23-187 authorizing the operation of golf car vehicles on roads within the county if the operation is (i) between sunrise and sunset and (ii) on roads with a posted speed limit of thirty-five miles per hour or less. When operating a golf car vehicle as authorized under this subsection, the operator shall not operate such vehicle at a speed in excess of twenty miles per hour. A golf car vehicle shall not be operated at any time on any state or federal highway but may be operated upon such highway in order to cross a portion of the highway system which intersects a road as directed in subsection (3) of this section. A county may, as part of such ordinance, implement standards for operation of golf car vehicles that are more stringent than the restrictions of this subsection for the safety of the operator and the public.

(c) Any person operating a golf car vehicle as authorized under this subsection 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 person operating the golf car vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days after such a request. The liability insurance coverage shall be subject to limits, exclusive of interest and costs, as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit



for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

(3) The crossing of a highway shall be permitted by a golf car vehicle only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The golf car vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with a street or road, as applicable.

(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; Laws 2015, LB570, § 1.

#### (mm) FARM EQUIPMENT DEALERS

**60-6,382 Farm equipment dealers; farm equipment haulers act as representative; conditions; signed statement; contents.**

Farm equipment dealers may allow farm equipment haulers to act as their representative when hauling farm equipment to or from the dealer's place of business. Farm equipment haulers shall carry in the motor vehicle hauling the farm equipment a signed statement from the farm equipment dealer stating that they are acting as a representative of the farm equipment dealer. The statement shall be dated and valid for ninety days and shall be subject to inspection by any peace officer. The statement shall indicate the name of the farm equipment dealer, the name of the hauler, and that the dealer authorizes the hauler to act as its representative for purposes of complying with width, height, and length limitations. Nothing in this section shall require farm equipment dealers to provide insurance coverage for farm equipment haulers.

**Source:** Laws 2014, LB1039, § 2.

**60-6,383 Implement of husbandry; weight and load limitations; operation restrictions.**

(1) An implement of husbandry being operated on any highway of this state, except the National System of Interstate and Defense Highways, shall be exempt from the weight and load limitations of subsections (2), (3), and (4) of section 60-6,294 but shall be subject to any ordinances or resolutions enacted by local authorities pursuant to section 60-681.

(2) An implement of husbandry being operated on any highway of this state shall not cross any bridge or culvert if the vehicle axle, axle groupings, or gross weight exceeds the limits established in subsections (2), (3), and (4) of section 60-6,294 or weight limits established by bridge postings.

(3) For purposes of this section, an implement of husbandry includes (a) a farm tractor with or without a towed farm implement, (b) a self-propelled farm implement, (c) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil or crops, (d) an agricultural floater-spreader implement as defined in section 60-303, (e) a fertilizer spreader, nurse tank, or truck permanently mounted with a spreader used for spreading or injecting water, dust, or liquid fertilizers or agricultural chemicals, (f) a truck mounted with a spreader used or manufactured to spread or inject animal manure, and (g) a mixer-feed truck owned and used by a livestock-raising operation designed for and used for the feeding of livestock.

**Source:** Laws 2016, LB977, § 22.

Operative date July 21, 2016.

## ARTICLE 14

### MOTOR VEHICLE INDUSTRY LICENSING

#### Section

- 60-1401. Act, how cited; applicability of amendments.
- 60-1401.02. Definitions, where found.
- 60-1401.28. Motorcycle, defined.
- 60-1401.42. Autocycle, defined.
- 60-1403. Board; investigators; powers and duties; seal; records; authentication; review of action; when.
- 60-1403.01. License required; restriction on issuance; exception.
- 60-1409. Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.
- 60-1417.02. Auction; registration of seller; exception.
- 60-1420. Franchise; termination; noncontinuance; change community; hearing; when required.
- 60-1424. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.
- 60-1425. Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.
- 60-1427. Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.
- 60-1429. Franchise; termination; noncontinuation; change community; additional dealership; acts not constituting good cause.
- 60-1436. Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.
- 60-1437. Manufacturer or distributor; prohibited acts with respect to new motor vehicles.
- 60-1438. Manufacturer or distributor; warranty obligation; prohibited acts.
- 60-1438.01. Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.
- 60-1439.01. Motor vehicle provided by motor vehicle dealer; motor vehicle insurance policies; primary coverage; secondary coverage.

#### **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; Laws 2013, LB133, § 1; Laws 2015, LB231, § 39.

#### **60-1401.02 Definitions, where found.**

For purposes of the Motor Vehicle Industry Regulation Act, the definitions found in sections 60-1401.03 to 60-1401.40 and 60-1401.42 apply.

**Source:** Laws 1971, LB 768, § 2; Laws 1972, LB 1335, § 1; Laws 1974, LB 754, § 1; Laws 1978, LB 248, § 3; Laws 1983, LB 234, § 18; Laws 1984, LB 825, § 12; Laws 1989, LB 280, § 1; Laws 1993, LB 121, § 388; Laws 1993, LB 200, § 1; Laws 1995, LB 564, § 2; Laws 1996, LB 1035, § 1; Laws 1998, LB 903, § 3; Laws 2000, LB 1018, § 1; Laws 2003, LB 498, § 1; Laws 2003, LB 563, § 34; Laws 2005, LB 274, § 256; Laws 2008, LB797, § 3; Laws 2009, LB50, § 1; Laws 2010, LB816, § 14; Laws 2015, LB231, § 40.

#### **60-1401.28 Motorcycle, defined.**

Motorcycle means every motor vehicle, except a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground and for which evidence of title is required as a condition precedent to registration under the laws of this state. Motorcycle does not include an auticycle.

**Source:** Laws 2010, LB816, § 40; Laws 2015, LB231, § 42.

#### **60-1401.42 Auticycle, defined.**

Auticycle means any motor vehicle (1) having a seat that does not require the operator to straddle or sit astride it, (2) designed to travel on three wheels in contact with the ground, (3) in which the operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top and is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and for each occupant a manufacturer-installed three-point safety belt system, (4) having antilock brakes, and (5) designed to be controlled with a steering wheel and pedals.

**Source:** Laws 2015, LB231, § 41.

#### **60-1403 Board; investigators; powers and duties; seal; records; authentication; review of action; when.**

(1) The board may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to the Motor Vehicle Industry Regulation Act;

(b) Perform all acts and duties provided for in the act necessary to the administration and enforcement of the act; and

(c) Make and enforce rules and regulations relating to the administration of but not inconsistent with the act.

(2) The board shall adopt a seal, which may be either an engraved or ink stamp seal, with the words Nebraska Motor Vehicle Industry Licensing Board and such other devices as the board may desire included on the seal by which it

shall authenticate the acts of its office. Copies of all records and papers in the office of the board under the hand and seal of its office shall be received in evidence in all cases equally and with like effect as the original.

(3) Investigators employed by the board may enter upon and inspect the facilities, the required records, and any vehicles, trailers, or motorcycles found in any licensed motor vehicle, motorcycle, or trailer dealer's established place or places of business.

(4) With respect to any action taken by the board, if a controlling number of the members of the board are active participants in the vehicle market in which the action is taken, the chairperson shall review the action taken and, upon completion of such review, modify, alter, approve, or reject the board's action.

**Source:** Laws 1957, c. 280, § 3, p. 1015; Laws 1967, c. 394, § 3, p. 1229; Laws 1971, LB 768, § 4; Laws 1994, LB 850, § 1; Laws 1995, LB 564, § 3; Laws 2010, LB816, § 55; Laws 2016, LB977, § 26.  
Operative date July 21, 2016.

#### **60-1403.01 License required; restriction on issuance; exception.**

(1) No person shall engage in the business as, serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, dealer's agent, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the Motor Vehicle Industry Regulation Act. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws.

(2) A license issued under the act shall authorize the holder thereof to engage in the business or activities permitted by the license subject to the act and the rules and regulations adopted and promulgated by the board under the act.

(3) This section shall not apply to a licensed real estate salesperson or broker who negotiates for sale or sells a trailer for any individual who is the owner of not more than two trailers.

(4) This section shall not restrict a licensed motor vehicle dealer from conducting an auction as provided in subsection (5) of section 60-1417.02.

**Source:** Laws 1971, LB 768, § 5; Laws 1972, LB 1335, § 2; Laws 1974, LB 754, § 3; Laws 1983, LB 234, § 20; Laws 2000, LB 1018, § 2; Laws 2003, LB 498, § 2; Laws 2010, LB816, § 56; Laws 2013, LB164, § 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.

### **60-1417.02 Auction; registration of seller; exception.**

(1) Except as otherwise provided in subsection (5) of this section, any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board as prescribed in section 60-1413.

(5) A licensed motor vehicle dealer may conduct an auction of excess inventory of used vehicles without being licensed as an auction dealer or

registered under this section if the auction conforms to the requirements of this subsection. The licensed motor vehicle dealer shall conduct the auction upon the licensed premises of the dealer, shall sell only used motor vehicles, trailers, or manufactured homes, shall sell only to motor vehicle dealers licensed in Nebraska, shall not sell any vehicles on consignment, and shall not sell any vehicles directly to the public.

**Source:** Laws 1984, LB 825, § 29; Laws 1999, LB 340, § 2; Laws 2010, LB816, § 71; Laws 2013, LB164, § 2.

**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.

**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 tire repair or replacement and 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; Laws 2013, LB165, § 1.

**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.

(7) The prohibitions set forth in subsection (2) of this section shall not apply to a manufacturer that:

(a) Does not own or operate more than two such dealers or dealership locations in this state;

(b) Owned, operated, or controlled a warranty repair or service facility in this state as of January 1, 2016;

(c) Manufactures engines for installation in a motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand pounds for which motor-driven vehicle evidence of title is required as a condition precedent to registration under the laws of this state, if the manufacturer is not otherwise a manufacturer of motor vehicles; and

(d) Provides to dealers on substantially equal terms access to all support for completing repairs, including, but not limited to, parts and assemblies, training and technical service bulletins, and other information concerning repairs that the manufacturer provides to facilities owned, operated, or controlled by the manufacturer.

**Source:** Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84; Laws 2011, LB477, § 10; Laws 2016, LB977, § 27.  
Operative date July 21, 2016.

**60-1439.01 Motor vehicle provided by motor vehicle dealer; motor vehicle insurance policies; primary coverage; secondary coverage.**

During the time when an insured person is operating a motor vehicle provided by a motor vehicle dealer for use while the insured person's motor vehicle is being serviced, repaired, or inspected by the motor vehicle dealer, when both the insured person's and motor vehicle dealer's motor vehicle insurance policies have a mutually repugnant clause regarding primary coverage, the insured person's motor vehicle insurance policy shall provide primary coverage for the motor vehicle and the motor vehicle insurance policy of the motor vehicle dealer shall provide secondary coverage until the motor vehicle is returned to the motor vehicle dealer. This section only applies to the loan of a motor vehicle by a motor vehicle dealer which occurs without financial remuneration in the form of a fee or lease charge paid directly by the insured person operating the motor vehicle. Payments made by any third party to a motor vehicle dealer, or similar reimbursements, shall not be considered payments directly from the insured person operating the motor vehicle.

**Source:** Laws 2013, LB133, § 2.

## ARTICLE 15

## DEPARTMENT OF MOTOR VEHICLES

## Section

- 60-1505. Vehicle Title and Registration System Replacement and Maintenance Cash Fund; created; use; investment.
- 60-1513. Department of Motor Vehicles Cash Fund; created; use; investment.
- 60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.

**60-1505 Vehicle Title and Registration System Replacement and Maintenance Cash Fund; created; use; investment.**

The Vehicle Title and Registration System Replacement and Maintenance Cash Fund is hereby created. The fund shall be administered by the Department of Motor Vehicles. Revenue credited to the fund shall include fees collected by the department from participation in any multistate electronic data security program, except as otherwise specifically provided by law, and funds transferred as provided in section 60-3,186. The fund shall be used by the department to pay for costs associated with the acquisition, implementation, maintenance, support, upgrades, and replacement of the vehicle titling and registration computer system. 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 2014, LB906, § 2; Laws 2016, LB977, § 28.  
Operative date July 1, 2016.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1513 Department of Motor Vehicles Cash Fund; created; use; investment.**

The Department of Motor Vehicles Cash Fund is hereby created. The fund shall be administered by the Director of Motor Vehicles. The fund shall be used by the Department of Motor Vehicles to carry out its duties as deemed necessary by the Director of Motor Vehicles, except that transfers from the fund to the General Fund or the Vehicle Title and Registration System Replacement and Maintenance Cash Fund may be made at the direction of the Legislature. Any money in the Department of Motor Vehicles Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer five million three hundred twenty-five thousand dollars from the Department of Motor Vehicles Cash Fund to the Vehicle Title and Registration System Replacement and Maintenance Cash Fund on or before June 30, 2017, as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1993, LB 491, § 17; Laws 1994, LB 1066, § 48; Laws 1995, LB 467, § 16; Laws 1996, LB 1191, § 1; Laws 2003, LB 209, § 16; Laws 2006, LB 1061, § 9; Laws 2007, LB322, § 11; Laws 2016, LB957, § 3.  
Effective date March 31, 2016.



## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**60-1515 Department of Motor Vehicles Cash Fund; use; legislative intent.**

(1) The Legislature hereby finds and declares that a statewide system for the collection, storage, and transfer of data on vehicle titles and registration and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in vehicle titling and registration. The Legislature hereby finds and declares that the electronic issuance of operators' licenses and state identification cards using a digital system as described in section 60-484.01 and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in issuing operators' licenses and state identification cards.

(2) It is therefore the intent of the Legislature that the Department of Motor Vehicles shall use a portion of the fees appropriated by the Legislature to the Department of Motor Vehicles Cash Fund as follows:

(a) To pay for the cost of issuing motor vehicle titles and registrations on a system designated by the department. The costs shall include, but not be limited to, software and software maintenance, programming, processing charges, and equipment including such terminals, printers, or other devices as deemed necessary by the department after consultation with the county to support the issuance of motor vehicle titles and registrations. The costs shall not include the cost of county personnel or physical facilities provided by the counties;

(b) To fund the centralization of renewal notices for motor vehicle registration and to furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator's license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance data base created under section 60-3,136.

**Source:** Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258; Laws 2013, LB207, § 6.

**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.

#### 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.

### ARTICLE 19

#### ABANDONED MOTOR VEHICLES

Section  
60-1901. Abandoned vehicle, defined.

#### **60-1901 Abandoned vehicle, defined.**

(1) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;

(b) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(e) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(f) If removed from private property by a municipality pursuant to a municipal ordinance.

(2) An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle:

(a) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(b) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(c) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;

(d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01; or

(e) If removed from private property by a municipality pursuant to a municipal ordinance.

(3) A mobile home is an abandoned vehicle if left in place on private property for more than thirty days after a local governmental unit, pursuant to an ordinance or resolution, has sent a certified letter to each of the last-registered owners and posted a notice on the mobile home, stating that the mobile home is subject to sale or auction or vesting of title as set forth in section 60-1903.

(4) For purposes of this section:

(a) Mobile home means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit, and shall include a manufactured home as defined in section 71-4603. Mobile home does not include a mobile home or manufactured home for which an affidavit of affixture has been recorded pursuant to section 60-169;

(b) Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and

(c) Private property means any privately owned property which is not included within the definition of public property.

(5) No motor vehicle subject to forfeiture under section 28-431 shall be an abandoned vehicle under this section.

**Source:** Laws 1971, LB 295, § 1; Laws 1999, LB 90, § 1; Laws 2004, LB 560, § 41; Laws 2005, LB 274, § 263; Laws 2009, LB60, § 1; Laws 2010, LB650, § 46; Laws 2014, LB1044, § 1.

**Cross References**

Motor Vehicle Registration Act, see section 60-301.

**ARTICLE 21**

**MINIBIKES OR MOTORCYCLES**

**(b) MOTORCYCLE SAFETY EDUCATION**

Section

- 60-2120. Act, how cited.
- 60-2121. Terms, defined.
- 60-2125. Motorcycle safety courses; requirements.
- 60-2126. Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.
- 60-2127. Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.
- 60-2128. Motorcycle safety instructor preparation course; department; duties.
- 60-2129. Motorcycle trainers; requirements; certificates; person certified by another state; how treated.
- 60-2130. Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.
- 60-2131. Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.
- 60-2132. Repealed. Laws 2011, LB 170, § 17.
- 60-2132.01. Motorcycle Safety Education Fund; transfers.
- 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.

**(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**

- 60-2904. Terms, defined.
- 60-2905. Disclosure of personal information prohibited.
- 60-2907. Motor vehicle record; disclosure; authorized purposes.
- 60-2909.01. Disclosure; purposes authorized.

**60-2904 Terms, defined.**

For purposes of the Uniform Motor Vehicle Records Disclosure Act:

(1) Department means the Department of Motor Vehicles or the duly authorized agents or contractors of the department responsible to compile and maintain motor vehicle records;

(2) Disclose means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person, organization, or entity by any means of communication;

(3) Individual record means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request;

(4) Motor vehicle record means any record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle certificate of title, motorboat certificate of title, or state identification card issued by the department or any other state or local agency authorized to issue any of such forms of credentials;

(5) Person means an individual, organization, or entity;

(6) Personal information means information that identifies a person, including an individual's driver identification number, name, address excluding zip code, and telephone number, but does not include information on vehicular accidents, driving or equipment-related violations, and driver's license or registration status; and

(7) Sensitive personal information means an individual's operator's license digital image, social security number, and medical or disability information.

**Source:** Laws 1997, LB 635, § 4; Laws 2000, LB 1317, § 11; Laws 2001, LB 574, § 32; Laws 2014, LB777, § 12.

#### **60-2905 Disclosure of personal information prohibited.**

(1) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-2906 and 60-2907, the department and any officer, employee, agent, or contractor of the department shall not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

(2) Notwithstanding any other provision of state law to the contrary, except as provided in sections 60-483, 60-484, 60-4,144, and 60-2909.01, the department and any officer, employee, agent, or contractor of the department shall not disclose sensitive personal information about any person obtained by the department in connection with a motor vehicle record without the express written consent of the person to whom such information pertains.

**Source:** Laws 1997, LB 635, § 5; Laws 2000, LB 1317, § 12; Laws 2014, LB983, § 57.

#### **60-2907 Motor vehicle record; disclosure; authorized purposes.**

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 personal information in the record, 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 matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(4) 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;

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

(6) 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;

(7) For use in providing notice to the owners of abandoned, towed, or impounded vehicles;

(8) For use only for a purpose permitted under this section either by a private detective, plain clothes investigator, or private investigative agency licensed under sections 71-3201 to 71-3213;

(9) 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 or CLP-commercial learner's permit 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;

(10) For use in connection with the operation of private toll transportation facilities;

(11) For bulk distribution for surveys of, marketing to, or solicitations of persons who have expressly consented to such disclosure if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department on a form prescribed by the department;

(12) For any use if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department;

(13) For use, including redisclosure through news publication, of a member of a medium of communication as defined in section 20-145 who requests such information in connection with preparing, researching, gathering, or confirming news information involving motor vehicle or driver safety or motor vehicle theft;

(14) For use by the federally designated organ procurement organization for Nebraska to establish and maintain the Donor Registry of Nebraska as provided in section 71-4822; and

(15) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

**Source:** Laws 1997, LB 635, § 7; Laws 2000, LB 1317, § 13; Laws 2004, LB 559, § 6; Laws 2010, LB1036, § 34; Laws 2014, LB983, § 58.

**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 or CLP-commercial learner’s permit 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 a holder of a commercial driver’s license or CLP-commercial learner’s permit 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; Laws 2014, LB983, § 59.

**ARTICLE 31  
STATE FLEET CARD PROGRAM**

Section  
60-3101. State fleet card programs; Department of Roads; University of Nebraska; State Treasurer; duties; political subdivisions; utilization authorized; unauthorized use prohibited.

## Section

60-3102. State Fleet Card Fund; created; rebates credited to fund; use.

**60-3101 State fleet card programs; Department of Roads; University of Nebraska; State Treasurer; duties; political subdivisions; utilization authorized; unauthorized use prohibited.**

(1) State fleet card programs shall be created and shall be administered separately by the Department of Roads and the University of Nebraska. The Department of Roads shall administer a fleet card program on behalf of state government and political subdivisions other than the University of Nebraska under a contract through the State Treasurer. The State Treasurer shall determine the type of fleet card or cards utilized in the state fleet card program. The State Treasurer shall contract with one or more financial institutions, card-issuing banks, credit card companies, charge card companies, debit card companies, or third-party merchant banks capable of operating a fleet card program on behalf of the state, including the University of Nebraska, and political subdivisions that participate in the state contract for such services. Rules and regulations may be adopted and promulgated as needed by the Department of Roads or the University of Nebraska for the operation of the state fleet card programs. The rules and regulations shall provide authorization instructions for all transactions. Expenses associated with the state fleet card programs shall be considered as an administrative or operational expense.

(2) For purposes of this section, fleet card means a payment card used for gasoline, diesel, and other fuels. Fleet cards may also be used to pay for vehicle and equipment maintenance and expenses at the discretion of the program administrator. The Department of Roads and the University of Nebraska shall each designate a program administrator.

(3) Any state official, agency, board, or commission may utilize a state fleet card for the purchase of goods and services described in subsection (2) of this section for and on behalf of the State of Nebraska. Any political subdivision may utilize a fleet card for the purchase of goods and services described in subsection (2) of this section for lawful government purposes of the political subdivision. No disbursements or cash back on fleet card transactions shall be allowed.

(4) Vendors accepting a state fleet card shall obtain authorization for all transactions in accordance with instructions from the program administrator. Transaction authorization shall be from the financial institution, card-issuing bank, credit card company, charge card company, debit card company, or third-party merchant bank contracted to provide such service to the State of Nebraska. Each transaction shall be authorized in accordance with the instructions provided by the program administrator for each state official, agency, board, or commission or each political subdivision.

(5) Detailed transaction information for the purposes of tracking expenditures shall include fleet card identification, merchant name and address, transaction number, date, time, product, quantity, cost, and equipment meter reading if applicable. A state fleet card program may require an itemized receipt for purposes of tracking expenditures of a state fleet card purchase from a commercial vendor as acceptable detailed transaction information. If detailed transaction information is not provided, the program administrator shall have the authority to temporarily or permanently suspend state fleet card purchases in accordance with rules and regulations.



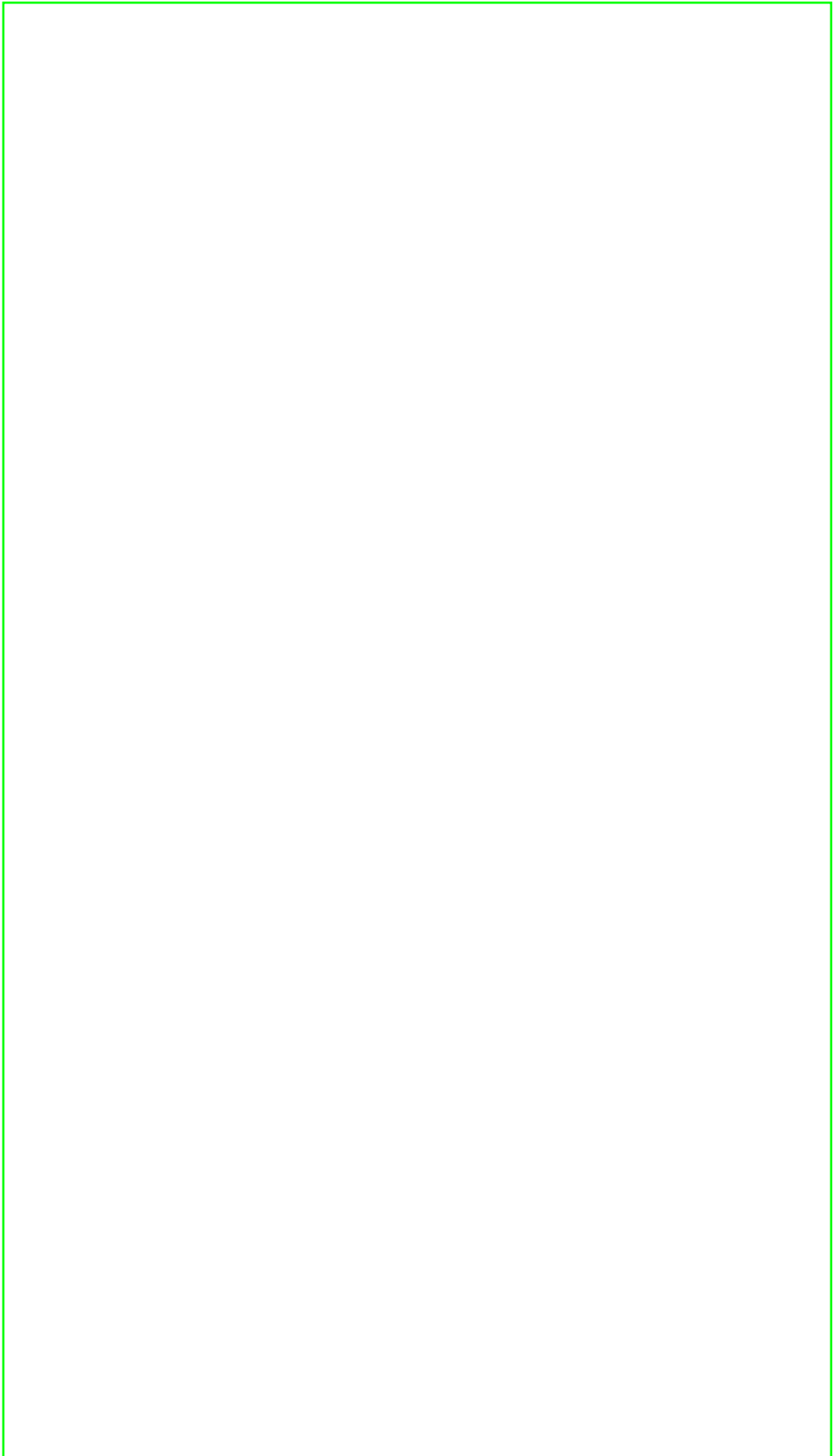
(6) No officer or employee of the state or of a political subdivision shall use a state fleet card for any unauthorized use.

**Source:** Laws 2013, LB137, § 1.

**60-3102 State Fleet Card Fund; created; rebates credited to fund; use.**

The State Fleet Card Fund is hereby created. All rebates received by the state from the fleet card program entered into by the State of Nebraska pursuant to section 60-3101 shall be credited to the fund. The fund may consist of fleet card rebates received on behalf of state officers, agencies, boards, and commissions and political subdivisions and shall be administered by the State Treasurer. Fleet card rebates received on behalf of state officers, agencies, boards, and commissions shall be transferred by the State Treasurer from the fund to the General Fund. Fleet card rebates received on behalf of political subdivisions shall be disbursed to political subdivisions consistent with the volume spent and contract terms.

**Source:** Laws 2013, LB137, § 2.



## CHAPTER 61

### NATURAL RESOURCES

Article.

2. Department of Natural Resources. 61-210 to 61-224.

#### 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. Repealed. Laws 2016, LB665, § 1.
- 61-221. Repealed. Laws 2016, LB665, § 1.
- 61-222. Water Sustainability Fund; created; use; investment.
- 61-223. Water Sustainability Fund; legislative intent.
- 61-224. Critical Infrastructure Facilities Cash Fund; created; use; investment.

**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.

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 Repealed. Laws 2016, LB665, § 1.**

**61-221 Repealed. Laws 2016, LB665, § 1.**

**61-222 Water Sustainability Fund; created; use; investment.**

The Water Sustainability Fund is created in the Department of Natural Resources. The fund shall be used in accordance with the provisions established in Laws 2014, LB1098, and for costs directly related to the administration of the fund.

The fund shall consist of money transferred to the fund by the Legislature, other funds as appropriated by the Legislature, and money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

It is the intent of the Legislature that twenty-one million dollars be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and that eleven million dollars be transferred from the General Fund to the Water Sustainability Fund each fiscal year beginning in fiscal year 2015-16. It is the intent of the Legislature that three million dollars be transferred annually from the Water Sustainability Fund to the Nebraska Resources Development Fund in FY2015-16 and in FY2016-17.

**Source:** Laws 2014, LB906, § 7; Laws 2015, LB661, § 31.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**61-223 Water Sustainability Fund; legislative intent.**

The Legislature finds that water sustainability programs, projects, and activities are complex, multiyear endeavors that require a stable source of state funding support in order for the required matching funds to be secured and for projects to be completed in a timely and successful manner. It is the intent of the Legislature that transfers of money from the General Fund to the Water Sustainability Fund be maintained at the level established in section 61-222 for a minimum of ten fiscal years.

**Source:** Laws 2015, LB661, § 20.



**61-224 Critical Infrastructure Facilities Cash Fund; created; use; investment.**

There is hereby created the Critical Infrastructure Facilities Cash Fund in the Department of Natural Resources. The fund shall consist of funds appropriated or transferred by the Legislature. The fund shall be used by the Department of Natural Resources to provide a grant to a natural resources district to offset costs related to soil and water improvements intended to protect critical infrastructure facilities within the district which includes military installations, transportation routes, and wastewater treatment facilities. 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.

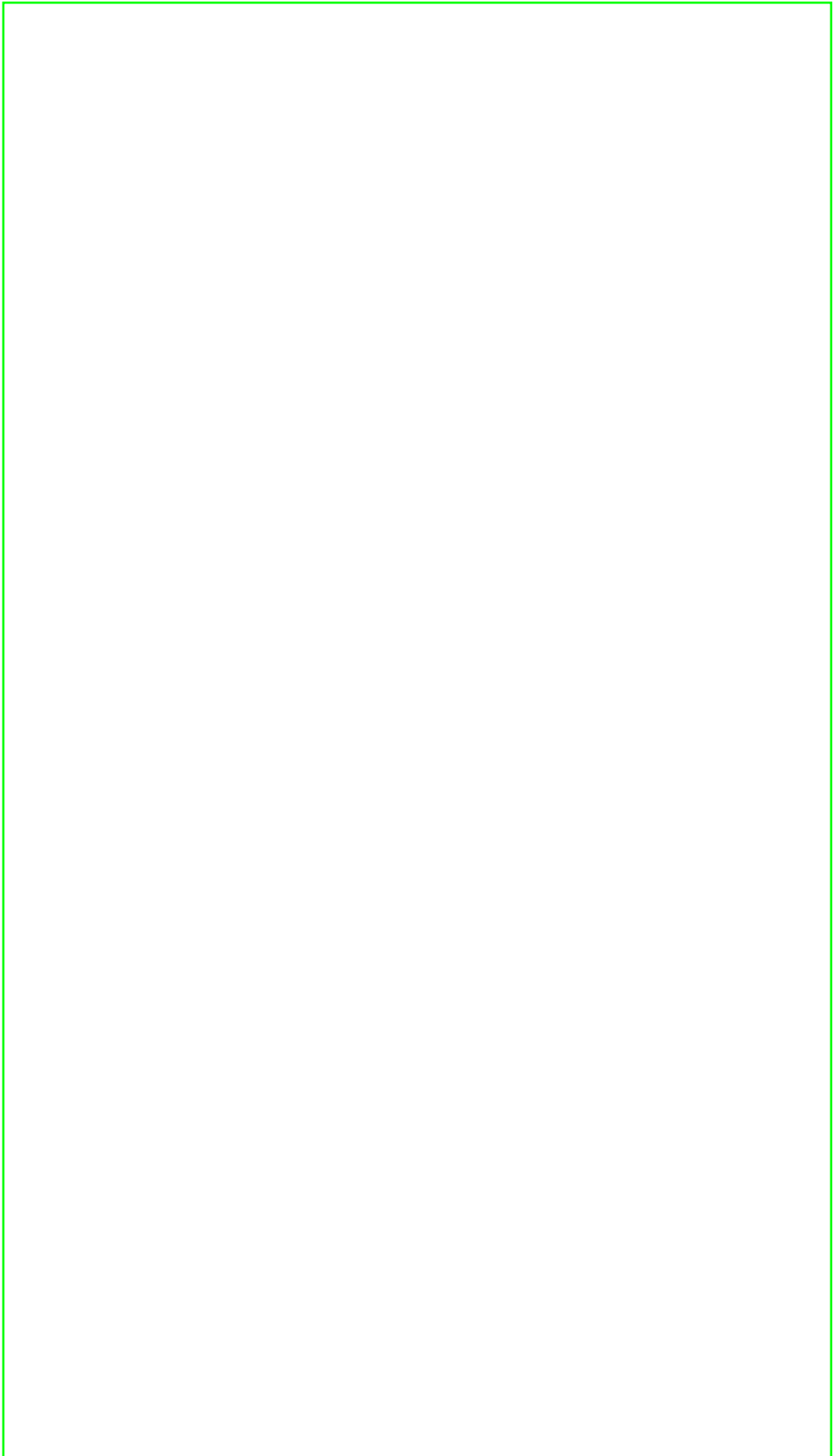
**Source:** Laws 2016, LB957, § 21.

Effective date March 31, 2016.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.



## CHAPTER 64

### NOTARIES PUBLIC

#### Article.

1. General Provisions.
  - (a) Appointment and Powers. 64-101 to 64-113.
  - (c) Rules and Regulations. 64-119.
3. Electronic Notary Public Act. 64-301 to 64-317.

#### 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.

#### **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.

#### **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.

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

A notary public is authorized and empowered, within the state: (1) To administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney,

and other instruments in writing, to be used or recorded in this or another state; 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.

**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.

### (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.

### ARTICLE 3

#### ELECTRONIC NOTARY PUBLIC ACT

##### Section

- 64-301. Act, how cited.
- 64-302. Terms, defined.
- 64-303. Eligibility to register as electronic notary public; Secretary of State; powers.
- 64-304. Registration; renewal.
- 64-305. Course of instruction; examination.
- 64-306. Fee.
- 64-307. Type of electronic notarial acts authorized.
- 64-308. Signer of document; requirements.
- 64-309. Performance of electronic notarial act; components.
- 64-310. Notary public's electronic signature and electronic notary seal; use; maintenance of records; notification to Secretary of State of theft or vandalism.
- 64-311. Registration expiration, resignation, cancellation, or revocation; death of notary public; duties.
- 64-312. Electronic evidence of authenticity of notary public's electronic signature and electronic notary seal; form.
- 64-313. Electronic certificate of authority; contents; fee.
- 64-314. Violations of act.
- 64-315. Notary public not required to register.
- 64-316. Rules and regulations.
- 64-317. Other laws applicable.

#### **64-301 Act, how cited.**

Sections 64-301 to 64-317 shall be known and may be cited as the Electronic Notary Public Act.

**Source:** Laws 2016, LB465, § 1.  
Operative date July 1, 2017.

#### **64-302 Terms, defined.**

For purposes of the Electronic Notary Public Act:

(1) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;



(2) Electronic document means information that is created, generated, sent, communicated, received, or stored by electronic means;

(3) Electronic notarial act means an official act by an electronic notary public that involves electronic documents;

(4) Electronic notary public means a notary public registered with the Secretary of State that has the capability of performing electronic notarial acts in conformance with the Electronic Notary Public Act;

(5) Electronic notary seal means information within a notarized electronic document that includes the notary public's name, jurisdiction, and commission expiration date and generally corresponds to the data in notary seals used on paper documents;

(6) Electronic notary solution provider means a provider of any electronic notary seals or electronic signatures;

(7) Electronic signature means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document; and

(8) Notary public's electronic signature means an electronic signature which has been approved by the Secretary of State in rules and regulations adopted and promulgated under section 64-316 as an acceptable means for an electronic notary public to attach or logically associate the notary public's official signature to an electronic document that is being notarized.

**Source:** Laws 2016, LB465, § 2.  
Operative date July 1, 2017.

**64-303 Eligibility to register as electronic notary public; Secretary of State; powers.**

(1) To be eligible to register as an electronic notary public, a person shall:

- (a) Hold a valid commission as a notary public in the State of Nebraska;
- (b) Satisfy the education requirement of section 64-305; and
- (c) Pay the fee required under section 64-306.

(2) The Secretary of State shall not accept the registration if the requirements of subsection (1) of this section are not met.

**Source:** Laws 2016, LB465, § 3.  
Operative date July 1, 2017.

**64-304 Registration; renewal.**

(1) Before performing an electronic notarial act, a notary public shall register with the Secretary of State in a manner prescribed by the Secretary of State.

(2) The registration shall specify the technology the notary public intends to use to perform an electronic notarial act. Such technology shall be provided by an electronic notary solution provider approved by the Secretary of State.

(3) The term of registration as an electronic notary public shall coincide with the term of the commission of the notary public.

(4) A person registered as an electronic notary public may renew his or her electronic notary public registration at the same time he or she renews his or her notary public commission.

**Source:** Laws 2016, LB465, § 4.  
Operative date July 1, 2017.

**64-305 Course of instruction; examination.**

(1) Before registering as an electronic notary public, a notary public shall take a course of instruction approved by the Secretary of State and pass an examination for such course in addition to the requirements provided in section 64-101.01.

(2) The content of the course and the basis for the examination shall include notarial laws, procedures, technology, and the ethics of electronic notarization.

**Source:** Laws 2016, LB465, § 5.  
Operative date July 1, 2017.

**64-306 Fee.**

The fee for registering or reregistering as an electronic notary shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Electronic Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Administration Cash Fund for use in administering the Electronic Notary Public Act.

**Source:** Laws 2016, LB465, § 6.  
Operative date July 1, 2017.

**64-307 Type of electronic notarial acts authorized.**

The following types of electronic notarial acts may be performed by an electronic notary public:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations.

**Source:** Laws 2016, LB465, § 7.  
Operative date July 1, 2017.

**64-308 Signer of document; requirements.**

An electronic notarial act shall not be performed if the signer of the electronic document is not in the physical presence of the electronic notary public at the time of notarization and is not personally known to the electronic notary public or identified by the notary public through satisfactory evidence as provided in section 64-105.

**Source:** Laws 2016, LB465, § 8.  
Operative date July 1, 2017.

**64-309 Performance of electronic notarial act; components.**

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary public and shall be immediately perceptible and reproducible in the electronic document to which the notary public's electronic signature is attached: (1) The electronic notary seal; (2) the notary public's electronic signature; and (3) the completed wording of one of the following notarial certificates: (a) Acknowledgment, (b) jurat, (c) verification or proof, or (d) oath or affirmation.

**Source:** Laws 2016, LB465, § 9.  
Operative date July 1, 2017.

**64-310 Notary public's electronic signature and electronic notary seal; use; maintenance of records; notification to Secretary of State of theft or vandalism.**

(1) A notary public's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing an electronic notarial act.

(2) An electronic notary public shall safeguard his or her electronic signature, electronic notary seal, and all other notarial records. Notarial records shall be maintained by the electronic notary public, and the electronic notary public shall not surrender or destroy the records except as required by a court order or as allowed under rules and regulations adopted and promulgated by the Secretary of State.

(3) When not in use, the electronic notary public shall keep his or her electronic signature, electronic notary seal, and all other notarial records secure, under his or her exclusive control, and shall not allow them to be used by any other notary public or any other person.

(4) Within ten days after discovering that his or her electronic notary seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of being attached to or logically associated with an electronic document, an electronic notary public shall notify the Secretary of State and appropriate law enforcement agency in the case of theft or vandalism.

**Source:** Laws 2016, LB465, § 10.  
Operative date July 1, 2017.

**64-311 Registration expiration, resignation, cancellation, or revocation; death of notary public; duties.**

(1) When the registration of an electronic notary public expires or is resigned, canceled, or revoked or when an electronic notary public dies, he or she or his or her duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic signature.

(2) A former electronic notary public whose previous registration was not revoked, canceled, or denied by the Secretary of State need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic

signature if he or she is reregistered as an electronic notary public using the same electronic signature within three months after the registration expires.

**Source:** Laws 2016, LB465, § 11.  
Operative date July 1, 2017.

**64-312 Electronic evidence of authenticity of notary public’s electronic signature and electronic notary seal; form.**

Electronic evidence of the authenticity of the notary public’s electronic signature and electronic notary seal of an electronic notary public of this state, if required, shall be attached to, or logically associated with, a document with a notary public’s electronic signature transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States Government.

**Source:** Laws 2016, LB465, § 12.  
Operative date July 1, 2017.

**64-313 Electronic certificate of authority; contents; fee.**

(1) An electronic certificate of authority evidencing the authenticity of the notary public’s electronic signature and electronic notary seal of an electronic notary public of this state shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I .....(name, title, jurisdiction of commissioning official) certify that ..... (name of electronic notary public), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of Nebraska and authorized to act as such at the time of the document’s electronic notarization. To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this ..... day of ....., 20.....

(Electronic signature (and seal) of commissioning official)

(2) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Administration Cash Fund.

**Source:** Laws 2016, LB465, § 13.  
Operative date July 1, 2017.

**64-314 Violations of act.**

A person violating the Electronic Notary Public Act is subject to having his or her registration removed under the removal procedures provided in section 64-113.

**Source:** Laws 2016, LB465, § 14.  
Operative date July 1, 2017.

**64-315 Notary public not required to register.**

Nothing in the Electronic Notary Public Act requires a notary public to register as an electronic notary public if he or she does not perform electronic notarial acts.

**Source:** Laws 2016, LB465, § 15.  
Operative date July 1, 2017.

#### **64-316 Rules and regulations.**

The Secretary of State may adopt and promulgate rules and regulations to insure the integrity, security, and authenticity of electronic notarizations in accordance with the Electronic Notary Public Act. Such rules and regulations shall include procedures for the approval of electronic notary solution providers by the Secretary of State. In addition, the Secretary of State may require an electronic notary public to create and to maintain a record, journal, or entry of each electronic notarial act.

**Source:** Laws 2016, LB465, § 16.  
Operative date July 1, 2017.

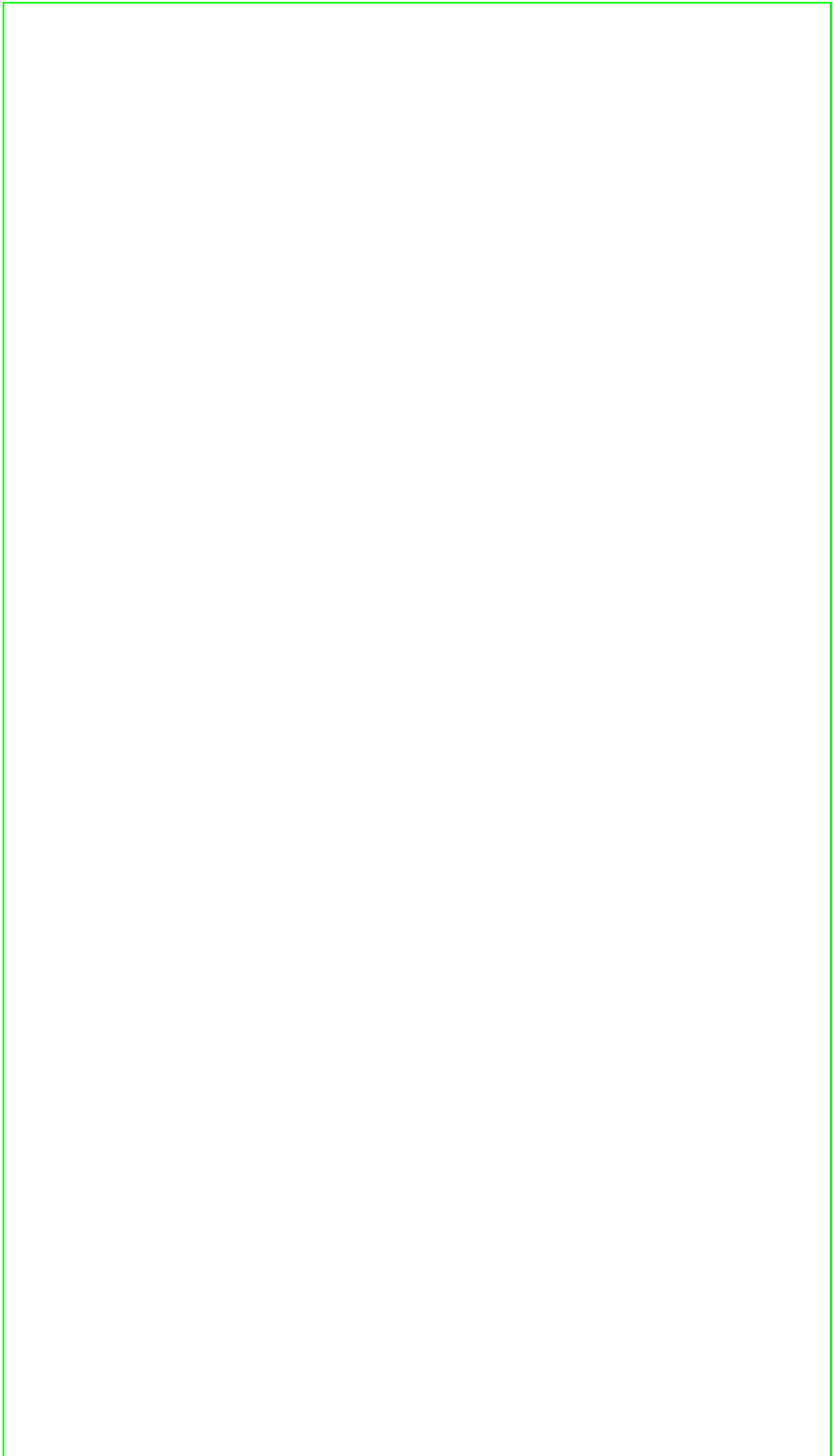
#### **64-317 Other laws applicable.**

Sections 64-101 to 64-119 and 64-211 to 64-215 and the Uniform Recognition of Acknowledgments Act govern an electronic notary public unless the provisions of such sections and act are in conflict with the Electronic Notary Public Act, in which case the Electronic Notary Public Act controls.

**Source:** Laws 2016, LB465, § 17.  
Operative date July 1, 2017.

#### **Cross References**

Uniform Recognition of Acknowledgments Act, see section 64-201.





## CHAPTER 66

### OILS, FUELS, AND ENERGY

#### Article.

2. Nebraska Clean-burning Motor Fuel Development Act. 66-201 to 66-204.
3. Carbon Dioxide Emissions. 66-301 to 66-304.
4. Motor Vehicle Fuel Tax. 66-482 to 66-4,146.
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. 66-6,102 to 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.
  - (g) Energy Financing Contracts. 66-1062 to 66-1065.
13. Ethanol. 66-1336 to 66-1345.04.
14. International Fuel Tax Agreement Act. 66-1405 to 66-1418.
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. Repealed.
20. Natural Gas Fuel Board. 66-2001.
21. Rural Infrastructure Development. 66-2101 to 66-2107.

#### ARTICLE 2

#### NEBRASKA CLEAN-BURNING MOTOR FUEL DEVELOPMENT ACT

#### Section

- 66-201. Act, how cited.
- 66-202. Terms, defined.
- 66-203. Rebate for qualified clean-burning motor vehicle fuel property.
- 66-204. Clean-burning Motor Fuel Development Fund; created; use; investment.

#### **66-201 Act, how cited.**

Sections 66-201 to 66-204 shall be known and may be cited as the Nebraska Clean-burning Motor Fuel Development Act.

**Source:** Laws 2015, LB581, § 1.

#### **66-202 Terms, defined.**

For purposes of the Nebraska Clean-burning Motor Fuel Development Act:

(1) Flex-fuel dispenser means a fuel dispenser that is certified by the manufacturer for use with ethanol blended fuels containing at least fifteen percent by volume ethanol;

(2) Motor vehicle means a motor vehicle originally designed by the manufacturer to operate lawfully and principally on highways, roads, and streets;

(3) Qualified clean-burning motor vehicle fuel means a hydrogen fuel cell, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or gasoline containing at least fifteen percent by volume ethanol; and

(4) Qualified clean-burning motor vehicle fuel property means:

(a) New equipment that:

(i) Is installed:

(A) By a certified installer;

(B) On a motor vehicle registered pursuant to the Motor Vehicle Registration Act; and

(C) To convert a motor vehicle propelled by gasoline or diesel fuel to be propelled by a qualified clean-burning motor vehicle fuel as part of a dedicated bi-fuel or dual-fuel system;

(ii) Is approved by the United States Environmental Protection Agency under 40 C.F.R. part 85, subpart F, and 40 C.F.R. part 86, subpart S, as such subparts existed on January 1, 2015; and

(iii) Has not been used to modify or retrofit any other motor vehicle propelled by gasoline or diesel fuel;

(b) With respect to a motor vehicle that was originally equipped to be propelled by a qualified clean-burning motor vehicle fuel other than ethanol, the portion of the basis that is attributable to the:

(i) Storage of the qualified clean-burning motor vehicle fuel;

(ii) Delivery of the qualified clean-burning motor vehicle fuel to the motor vehicle's engine; and

(iii) Exhaust of gases from the combustion of the qualified clean-burning motor vehicle fuel; or

(c) New property that:

(i) Is directly related to the dispensing of ethanol-blended fuels containing at least fifteen percent by volume ethanol or the compression and delivery of natural gas from a private home or residence for noncommercial purposes into the fuel tank of a motor vehicle propelled by compressed natural gas; and

(ii) Has not been previously installed or used at another location to refuel motor vehicles powered by natural gas.

**Source:** Laws 2015, LB581, § 2; Laws 2016, LB902, § 1.

Effective date July 21, 2016.

#### Cross References

Motor Vehicle Registration Act, see section 60-301.

### **66-203 Rebate for qualified clean-burning motor vehicle fuel property.**

(1) The State Energy Office shall offer a rebate for qualified clean-burning motor vehicle fuel property.

(2)(a) The rebate for qualified clean-burning motor vehicle fuel property as defined in subdivisions (4)(a) and (b) of section 66-202 is the lesser of fifty percent of the cost of the qualified clean-burning motor vehicle fuel property or four thousand five hundred dollars for each motor vehicle.

(b) A qualified clean-burning motor vehicle fuel property is not eligible for a rebate under this section if the person or entity applying for the rebate has claimed another rebate or grant for the same motor vehicle under any other state rebate or grant program.

(3) The rebate for qualified clean-burning motor vehicle fuel property as defined in subdivision (4)(c) of section 66-202 is the lesser of fifty percent of the cost of the qualified clean-burning motor vehicle fuel property or two thousand

five hundred dollars for each qualified clean-burning motor vehicle fuel property.

(4) No qualified clean-burning motor vehicle fuel property shall qualify for more than one rebate under this section.

**Source:** Laws 2015, LB581, § 3; Laws 2016, LB902, § 2.  
Effective date July 21, 2016.

**66-204 Clean-burning Motor Fuel Development Fund; created; use; investment.**

(1) The Clean-burning Motor Fuel Development Fund is created. The fund shall consist of grants, private contributions, and all other sources.

(2) The fund shall be used by the State Energy Office to provide rebates under the Nebraska Clean-burning Motor Fuel Development Act up to the amount transferred under subsection (3) of this section. No more than thirty-five percent of the money in the fund annually shall be used as rebates for flex-fuel dispensers. The State Energy Office may use the fund for necessary costs in the administration of the act up to an amount not exceeding ten percent of the fund annually.

(3) Within five days after August 30, 2015, the State Treasurer shall transfer five hundred thousand dollars from the General Fund to the Clean-burning Motor Fuel Development Fund to carry out the Nebraska Clean-burning Motor Fuel Development Act.

(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 2015, LB581, § 4; Laws 2016, LB902, § 3; Laws 2016, LB957, § 4.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB902, section 3, with LB957, section 4, to reflect all amendments.

**Note:** Changes made by LB957 became effective March 31, 2016. Changes made by LB902 became effective July 21, 2016.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

**Nebraska State Funds Investment Act**, see section 72-1260.

**ARTICLE 3**

**CARBON DIOXIDE EMISSIONS**

**Section**

66-301. Terms, defined.

66-302. Department of Environmental Quality; state plan for regulating carbon dioxide emissions; duties.

66-303. State Energy Office; duties; report; contents; legislative vote.

66-304. State plan; submit to Legislature.

**66-301 Terms, defined.**

For purposes of sections 66-301 to 66-304:

(1) Covered electric generating unit means a fossil fuel-fired electric generating unit existing within the state prior to August 30, 2015, that is subject to regulation under the federal emission guidelines;

(2) Federal emission guidelines means any final rules, regulations, guidelines, or other requirements that the United States Environmental Protection Agency

may adopt for regulating carbon dioxide emissions from covered electric generating units under section 111(d) of the federal Clean Air Act, 42 U.S.C. 7411(d);

(3) State means the State of Nebraska; and

(4) State plan means any plan to establish and enforce carbon dioxide emission control measures that the Department of Environmental Quality may adopt to implement the obligations of the state under the federal emission guidelines.

**Source:** Laws 2015, LB469, § 1.

**66-302 Department of Environmental Quality; state plan for regulating carbon dioxide emissions; duties.**

The Department of Environmental Quality shall not submit a state plan for regulating carbon dioxide emissions from covered electric generating units to the United States Environmental Protection Agency until the department has provided a copy of the state plan to the State Energy Office. The department shall provide such copy to the State Energy Office prior to the submission deadline for the state plan set by the United States Environmental Protection Agency. If the United States Environmental Protection Agency extends the submission deadline, the department shall provide such copy to the State Energy Office at least one hundred twenty days prior to the extended submission deadline. Nothing in this section shall prevent the department from complying with federally prescribed deadlines.

**Source:** Laws 2015, LB469, § 2.

**66-303 State Energy Office; duties; report; contents; legislative vote.**

(1) After receiving the copy of the state plan under section 66-302, the State Energy Office shall prepare a report that assesses the effects of the state plan on:

(a) The electric power sector, including:

(i) The type and amount of electric generating capacity within the state that is likely to retire or switch to another fuel;

(ii) The stranded investment in electric generating capacity and other infrastructure;

(iii) The amount of investment necessary to offset retirements of electric generating capacity and maintain generation reserve margins;

(iv) Potential risks to electric reliability, including resource adequacy risks and transmission constraints; and

(v) The amount by which retail electricity prices within the state are forecast to increase or decrease; and

(b) Employment within the state, including direct and indirect employment effects within affected sectors of the state's economy.

(2) The State Energy Office shall complete the report required under this section within thirty days after receiving the copy of the state plan under section 66-302 and shall electronically submit to the Legislature a copy of such report.

(3) If the Legislature is in session when it receives the report, the Legislature may vote on a nonbinding legislative resolution endorsing or disapproving the state plan based on the findings of the report.

**Source:** Laws 2015, LB469, § 3.

**66-304 State plan; submit to Legislature.**

Upon submitting a state plan to the United States Environmental Protection Agency, the Department of Environmental Quality shall electronically submit to the Legislature a copy of the state plan.

**Source:** Laws 2015, LB469, § 4.

**ARTICLE 4**

**MOTOR VEHICLE FUEL TAX**

Section

- 66-482. Terms, defined.
- 66-486. Motor fuel tax; collection; commission.
- 66-488. Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.
- 66-489. Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.
- 66-489.02. 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.
- 66-4,105. Motor fuels; use; excise tax; amount; use, defined.
- 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.
- 66-4,145. Additional excise tax.
- 66-4,146. Fuels; use; additional excise tax.

**66-482 Terms, defined.**

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

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

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

search method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(22) Ethanol facility shall mean a plant which produces agricultural ethyl alcohol; and

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

**Source:** Laws 1925, c. 172, § 1, p. 448; Laws 1929, c. 150, § 1, p. 525; C.S.1929, § 66-401; Laws 1935, c. 3, § 15, p. 63; Laws 1935, Spec. Sess., c. 13, § 1, p. 86; Laws 1939, c. 86, § 1, p. 366; C.S.Supp.,1941, § 66-401; R.S.1943, § 66-401; Laws 1955, c. 246, § 1, p. 777; Laws 1963, c. 377, § 1, p. 1214; Laws 1963, c. 375, § 2, p. 1206; Laws 1981, LB 360, § 1; Laws 1987, LB 523, § 5; Laws 1988, LB 1039, § 1; R.S.1943, (1990), § 66-401; Laws 1991, LB 627, § 9; Laws 1993, LB 121, § 395; Laws 1994, LB 1160, § 55; Laws 1995, LB 182, § 28; Laws 1996, LB 1121, § 1; Laws 1998, LB 1161, § 14; Laws 2004, LB 479, § 1; Laws 2004, LB 983, § 5; Laws 2005, LB 274, § 267; Laws 2008, LB846, § 2; Laws 2014, LB851, § 6.

#### Cross References

For additional definitions, see section 66-712.

### **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.

**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.

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

(1)(a) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax in an amount set in subdivision (b) of this subsection upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (i) the required taxes on the motor fuels have been paid, (ii) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (iii) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (iv) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel

facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (v) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(b) The tax shall be:

(i) Seven and one-half cents per gallon through December 31, 2015;

(ii) Eight cents per gallon beginning on January 1, 2016, through December 31, 2016;

(iii) Eight and one-half cents per gallon beginning on January 1, 2017, through December 31, 2017;

(iv) Nine cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(v) Nine and one-half cents per gallon beginning on January 1, 2019.

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

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

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

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

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

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

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

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

**Source:** Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 449; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 87, § 2, p. 367; Laws 1941, c. 133, § 1, p. 523; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(2), p. 474; Laws 1943, c. 141, § 1(2), p. 483; R.S.1943, § 66-410; Laws 1953, c. 225, § 1, p. 792; Laws 1955, c. 247, § 1, p. 780; Laws 1957, c. 282, § 1, p. 1028; Laws 1963, c. 376, § 3, p. 1211; Laws 1965, c. 391, § 1, p. 1249; Laws 1967, c. 397, § 3, p. 1248; Laws 1969, c. 528, § 4, p. 2161; Laws 1969, c. 529, § 1, p. 2167; Laws 1971, LB 776, § 2; Laws 1972, LB 1208, § 1; Laws 1977, LB 139, § 2; Laws 1977, LB 52, § 2; Laws 1979, LB 571, § 3; Laws 1980, LB 722, § 6; Laws 1981, LB 104, § 1; Laws 1981, LB 360, § 4; Laws 1985, LB 346, § 1; Laws 1988, LB 1039, § 3; Laws 1990, LB 1124, § 2; R.S.1943, (1990), § 66-410; Laws 1991, LB 627, § 16; Laws 1994, LB 1160, § 62; Laws 1996, LB 1121, § 3; Laws 2004, LB 983, § 12; Laws 2004, LB 1065, § 1; Laws 2006, LB 1003, § 5; Laws 2007, LB322, § 12; Laws 2008, LB846, § 5; Laws 2015, LB610, § 1.

**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.

**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.

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

(1) There is hereby levied and imposed an excise tax in an amount set in subsection (2) of this section, increased by the amounts imposed or determined under sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146, upon the use of all motor fuels used in this state and due the State of Nebraska under section 66-489. Users of motor fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by Chapter 66, article 4, other than any commissions provided under such article.

(2) The excise tax shall be:

(a) Seven and one-half cents per gallon through December 31, 2015;

(b) Eight cents per gallon beginning on January 1, 2016, through December 31, 2016;

(c) Eight and one-half cents per gallon beginning on January 1, 2017, through December 31, 2017;

(d) Nine cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(e) Nine and one-half cents per gallon beginning on January 1, 2019.

(3) For purposes of this section and section 66-4,106, use means the purchase or consumption of motor fuels in this state.

**Source:** Laws 1931, c. 130, § 1, p. 363; Laws 1935, c. 155, § 2, p. 573; Laws 1935, Spec. Sess., c. 16, § 2, p. 129; Laws 1937, c. 148, § 2, p. 567; Laws 1939, c. 84, § 3, p. 363; Laws 1941, c. 133, § 3, p. 526; C.S.Supp.,1941, § 66-416; Laws 1943, c. 138, § 3, p. 476; R.S.1943, § 66-428; Laws 1953, c. 225, § 3, p. 794; Laws 1955, c. 247, § 3, p. 781; Laws 1957, c. 282, § 3, p. 1029; Laws 1963, c. 379, § 1, p. 1218; Laws 1965, c. 391, § 3, p. 1251; Laws 1969, c. 529, § 2, p. 2168; Laws 1971, LB 776, § 3; Laws 1972, LB 1208, § 3; Laws 1973, LB 397, § 4; Laws 1977, LB 139, § 3; Laws 1977, LB 52, § 3; Laws 1979, LB 571, § 4; Laws 1980, LB 722, § 8; Laws 1981, LB 104, § 2; Laws 1981, LB 360, § 7; Laws 1984, LB 767, § 14; Laws 1985, LB 346, § 3; Laws 1988, LB 1039, § 5; Laws 1990, LB 1124, § 3; R.S.1943, (1990), § 66-428; Laws 1991, LB 627, § 27; Laws 1994, LB 1160, § 68; Laws 2004, LB 983, § 19; Laws 2008, LB846, § 10; Laws 2015, LB610, § 2.

**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.

#### **66-4,145 Additional excise tax.**

(1) In addition to the tax imposed by sections 66-489, 66-489.02, and 66-4,140, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax in an amount set in subsection (2) of this section on all motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska.

(2) The excise tax shall be:

(a) Two and eight-tenths cents per gallon through December 31, 2015;

(b) Three and eight-tenths cents per gallon beginning on January 1, 2016, through December 31, 2016;

(c) Four and eight-tenths cents per gallon beginning on January 1, 2017, through December 31, 2017;

(d) Five and eight-tenths cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(e) Six and eight-tenths cents per gallon beginning on January 1, 2019.

**Source:** Laws 1980, LB 722, § 14; Laws 1985, LB 112, § 2; Laws 1988, LB 1039, § 8; R.S.1943, (1990), § 66-477; Laws 1991, LB 627, § 58; Laws 1994, LB 1160, § 78; Laws 2004, LB 983, § 28; Laws 2008, LB846, § 13; Laws 2015, LB610, § 3.

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

(1) In addition to the tax imposed by sections 66-489, 66-489.02, 66-4,140, and 66-4,145, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax in an amount set in subsection (2) of this section on all motor fuels used in the State of Nebraska.

(2) The tax shall be:

(a) Two and eight-tenths cents per gallon through December 31, 2015;

(b) Three and eight-tenths cents per gallon beginning on January 1, 2016, through December 31, 2016;

(c) Four and eight-tenths cents per gallon beginning on January 1, 2017, through December 31, 2017;

(d) Five and eight-tenths cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(e) Six and eight-tenths cents per gallon beginning on January 1, 2019.

**Source:** Laws 1980, LB 722, § 15; Laws 1985, LB 112, § 3; Laws 1988, LB 1039, § 9; R.S.1943, (1990), § 66-478; Laws 1991, LB 627, § 59; Laws 1994, LB 1160, § 79; Laws 2004, LB 983, § 29; Laws 2008, LB846, § 14; Laws 2015, LB610, § 4.

**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, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, ethanol or biodiesel facility, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the 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.

## ARTICLE 6

### DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

#### (c) ALTERNATIVE FUEL TAX

##### Section

- 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

- 66-6,102. Gallon equivalent, defined.
- 66-6,107. Excise tax; amount.
- 66-6,109. Excise tax; amount.
- 66-6,110. Retailer; return; filing requirements.
- 66-6,113. Compressed fuel tax; collection; commission.

#### (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

##### **66-6,102 Gallon equivalent, defined.**

Gallon equivalent means:

(1) For compressed natural gas, the amount of compressed natural gas that is deemed to be the energy equivalent of a gallon of gasoline according to the

National Institute of Standards and Technology Handbook 130 entitled Uniform Regulation for the Method of Sale of Commodities, Paragraph 2.27.1.3; or

(2) For liquefied natural gas, the amount of liquefied natural gas that is deemed to be the energy equivalent of a gallon of diesel fuel at diesel fuel's lower heating value of one hundred twenty-eight thousand seven hundred British thermal units, which amount shall be equal to six and six-hundredths pounds of liquefied natural gas.

**Source:** Laws 1995, LB 182, § 6; Laws 2014, LB867, § 6.

**66-6,107 Excise tax; amount.**

(1) In addition to the tax imposed pursuant to sections 66-6,108, 66-6,109, and 66-6,109.02, an excise tax in an amount set in subsection (2) of this section is levied and imposed on all compressed fuel sold for use in registered motor vehicles.

(2) The tax shall be:

(a) Seven and one-half cents per gallon or gallon equivalent through December 31, 2015;

(b) Eight cents per gallon or gallon equivalent beginning on January 1, 2016, through December 31, 2016;

(c) Eight and one-half cents per gallon or gallon equivalent beginning on January 1, 2017, through December 31, 2017;

(d) Nine cents per gallon or gallon equivalent beginning on January 1, 2018, through December 31, 2018; and

(e) Nine and one-half cents per gallon or gallon equivalent beginning on January 1, 2019.

**Source:** Laws 1995, LB 182, § 11; Laws 2004, LB 983, § 41; Laws 2008, LB846, § 16; Laws 2015, LB610, § 5.

**66-6,109 Excise tax; amount.**

(1) In addition to the tax imposed by sections 66-6,107, 66-6,108, and 66-6,109.02, each retailer shall pay an excise tax in an amount set in subsection (2) of this section on all compressed fuel sold for use in registered motor vehicles.

(2) The tax shall be:

(a) Two and eight-tenths cents per gallon or gallon equivalent through December 31, 2015;

(b) Three and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2016, through December 31, 2016;

(c) Four and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2017, through December 31, 2017;

(d) Five and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2018, through December 31, 2018; and

(e) Six and eight-tenths cents per gallon or gallon equivalent beginning on January 1, 2019.

**Source:** Laws 1995, LB 182, § 13; Laws 2008, LB846, § 18; Laws 2015, LB610, § 6.



**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.

**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.

## 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.

## 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.

**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.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**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.**

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.

#### 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.

**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.

**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.



**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.  |

(g) ENERGY FINANCING CONTRACTS

- |          |   |
|----------|---|
| 66-1062. | Terms, defined.   |
| 66-1064. | Governmental unit; powers and duties.   |
| 66-1065. | Energy financing contract; contents; energy service company; bond requirements. |

(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.

(g) ENERGY FINANCING CONTRACTS

**66-1062 Terms, defined.**

For purposes of sections 66-1062 to 66-1066:

(1) Energy conservation measure means a training, service, or operations program, facility alteration, or capital equipment acquisition designed to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs. Energy conservation measure includes:

(a) Repair or renovation of heating, ventilation, and air conditioning systems;  
(b) Installation or repair of automated or computerized energy control systems;

(c) Replacement or modification of lighting fixtures;

(d) Insulation of a building structure or systems within that structure;

(e) Installation of energy recovery systems;

(f) Installation of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(g) Replacement, weatherstripping, caulking, or other insulation of windows or doors;

(h) Meter replacement, installation, or modification or installation of automated meter reading systems;

(i) Replacement or installation of energy or water conservation equipment or improvements thereto, or the substitution of non-water-using fixtures, appliances, or equipment; or

(j) Any other measure designed to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs;

(2) Energy financing contract means an agreement between an energy service company and a governmental unit for the implementation of one or more energy conservation measures in an existing facility in order to reduce wastewater or energy, utility, or water consumption, enhance revenue, or reduce operating or capital costs. Energy financing contract includes, but is not limited to, a performance contract, shared-savings contract, guaranteed contract, and lease-purchase contract;

(3) Energy service company means a person or business experienced in the implementation and installation of energy conservation measures; and

(4) Governmental unit means a school district, community college area, village, city, county, or department or agency of the State of Nebraska.

**Source:** Laws 1998, LB 1129, § 9; Laws 1999, LB 236, § 1; Laws 2016, LB881, § 1.

Effective date July 21, 2016.

**66-1064 Governmental unit; powers and duties.**

(1) Prior to entering into an energy financing contract, a governmental unit shall obtain a written opinion from a professional engineer licensed in the State of Nebraska whose interests are independent from the financial savings or other revenue enhancement outcomes of the contract. The opinion shall contain a review of recommendations proposed by an energy service company pertaining to energy conservation measures designed to reduce energy or other utility consumption or to achieve operational or capital savings or revenue enhancement for the governmental unit.

(2) At least fourteen days prior to entering into an energy financing contract, a governmental unit shall furnish public notice of its intention to enter into such contract, the general nature of the proposed work being considered under the contract, and the name and telephone number of a person to be contacted by any energy service company interested in submitting a proposal to contract for such work. The governmental unit shall also directly solicit requests for qualifications from at least three energy service companies relating to the proposed contract.

(3) Upon receiving responses to its request for qualifications pursuant to subsection (2) of this section, the governmental unit may select the most qualified energy service company based on the company's experience, technical expertise, and financial arrangements, the overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant and appropriate. The governmental unit may thereafter negotiate and enter into an energy financing contract pursuant to section 66-1065 with the company selected based on the criteria established by the governmental unit.

**Source:** Laws 1998, LB 1129, § 11; Laws 2016, LB881, § 2.

Effective date July 21, 2016.

**66-1065 Energy financing contract; contents; energy service company; bond requirements.**

(1) Any energy financing contract entered into by a governmental unit shall:

(a) Detail the responsibilities of a Nebraska-licensed professional engineer in the design, installation, and commissioning of the energy conservation measures selected by the governmental unit. Any design shall conform to all statutes of the State of Nebraska pertaining to engineering design and public health, safety, and welfare;

(b) Set forth the calculated energy, utility, wastewater, or water cost savings or revenue enhancements, if applicable, during the contract period attributable to the energy conservation measures to be installed by the energy service company. Operational or capital savings or revenue enhancements may be included in the total savings amount, not guaranteed, but approved by the governmental unit;



(c) Estimate the useful life of each of the selected energy conservation measures;

(d) Provide that, except for obligations on termination of the contract prior to its expiration, payments on the contract are to be made over time, within a period not to exceed thirty years after the date of the installation of the energy conservation measures provided for under the contract;

(e) Provide that the calculated savings for each year of the contract period will meet or exceed all payments to be made during each year of the contract;

(f) Disclose the effective interest rate being charged by the energy service company; and

(g) In the case of a guaranteed savings contract, set forth the method by which savings will be calculated and a method of resolving any dispute in the amount of the savings. The energy service company shall have total responsibility for the savings guarantee for each guaranteed savings contract. Surplus savings realized during any year of the guaranteed savings contract shall be applied to future years' savings results.

(2) An energy service company entering into an energy financing contract shall provide a performance bond to the governmental unit in an amount equal to one hundred percent of the total cost of the implementation, installation, or construction of the energy conservation measures under the applicable energy financing contract to assure the company's faithful performance. The energy service company shall also supply a guarantee bond equal to one hundred percent of the guaranteed energy savings for the entire term of the contract.

**Source:** Laws 1998, LB 1129, § 12; Laws 2008, LB747, § 1; Laws 2016, LB881, § 3.

Effective date July 21, 2016.

## ARTICLE 13

### ETHANOL

#### Section

66-1336. Administrator.

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.**

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.

**Source:** Laws 1993, LB 364, § 7; Laws 2012, LB782, § 89; Laws 2013, LB222, § 21.

#### **66-1345 Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.**

(1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for

investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, (e) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 66-1345.01 through December 31, 2012, and (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

(a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;

(b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;

(c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and

(d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to 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; Laws 2014, LB130, § 1.

#### 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 hundred-weight 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.

## ARTICLE 14

### INTERNATIONAL FUEL TAX AGREEMENT ACT

#### Section

- 66-1405. Tax rate; how determined; setoff authorized.  
 66-1406.02. License; director; powers.  
 66-1418. Trip permits; issuance; fees.

#### **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.

Cross References

**Administrative Procedure Act**, see section 84-920.

**International Registration Plan Act**, see section 60-3,192.

**66-1418 Trip permits; issuance; fees.**

A trip permit shall be issued before any person required to obtain a trip permit enters this state. The trip permit shall be issued by the director through Internet sales from the department's web site. The trip permit shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

**Source:** Laws 2004, LB 983, § 63; Laws 2013, LB250, § 2; Laws 2016, LB667, § 1.  
Effective date July 21, 2016.

**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, 2020, 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, LB1065, § 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; Laws 2016, LB887, § 1.

Effective date April 8, 2016.

**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.

**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, 2020, 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, 2020, 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, 2020.

(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; Laws 2016, LB887, § 2.  
Effective date April 8, 2016.

#### 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, 2020, 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; Laws 2016, LB887, § 3. Effective date April 8, 2016.

#### 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, 2020, with money available in the fund if:

- (a) The responsible person cannot be identified or located;
- (b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

**Source:** Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41; Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35; Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6; Laws 2004, LB 962, § 108; Laws 2008, LB1145, § 4; Laws 2012, LB873, § 4; Laws 2016, LB887, § 4. Effective date April 8, 2016.

**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.

#### **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.

**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.

**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.

#### Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

## ARTICLE 19

### WIND MEASUREMENT EQUIPMENT

Section

66-1901. Repealed. Laws 2015, LB 469, § 19.

**66-1901 Repealed. Laws 2015, LB 469, § 19.**

## ARTICLE 20

### NATURAL GAS FUEL BOARD

Section

66-2001. Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; State Energy Office; administrative support.

**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.

## 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.

**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.

**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.

## 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.

**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.

**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.

**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.



## CHAPTER 67

### PARTNERSHIPS

Article.

2. Nebraska Uniform Limited Partnership Act.  
Part I—General Provisions. 67-234.  
Part II—Formation; Certificate of Limited Partnership. 67-248.02.  
Part XI—Miscellaneous. 67-296.  
Part XII—Conversion. 67-297 to 67-2,100.
4. Uniform Partnership Act of 1998.  
Part I—General Provisions. 67-401, 67-405.  
Part IX—Conversions and Mergers. 67-448.01 to 67-450.  
Part X—Limited Liability Partnership. 67-455, 67-456.

#### ARTICLE 2

#### NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

##### PART I—GENERAL PROVISIONS

Section

67-234. Limited partnership name.

##### PART II—FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-248.02. Merger or consolidation; procedure; effect.

##### PART XI—MISCELLANEOUS

67-296. Act, how cited.

##### PART XII—CONVERSION

67-297. Conversion; plan.

67-298. Conversion; articles of conversion.

67-299. Effect of conversion.

67-2,100. Existing conversion; effect.

##### 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 21-2,161 to 21-2,168. 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. 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 21-2,171 to 21-2,183 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; Laws 2013, LB283, § 2; Laws 2014, LB749, § 293.  
Operative date January 1, 2017.

**Cross References**

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.

**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 combina-

tion 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.

### **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 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; Laws 2013, LB283, § 3.

#### **Cross References**

**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.

**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.

**ARTICLE 4**

**UNIFORM PARTNERSHIP ACT OF 1998**

PART I—GENERAL PROVISIONS

Section

67-401. Act, how cited.

67-405. Supplemental principles of law.

PART IX—CONVERSIONS AND MERGERS

67-448.01. Domestic partnership; conversion into domestic limited liability company or foreign limited liability company; procedure; notice to holder of security interest.

67-448.02. Domestic limited liability partnership; conversion into domestic limited liability company or foreign limited liability company; procedure; notice to holder of security interest.

67-450. Merger of partnerships.

PART X—LIMITED LIABILITY PARTNERSHIP

67-455. Name.

67-456. Annual report; certificate of authority.

PART I—GENERAL PROVISIONS

**67-401 Act, how cited.**

Sections 67-401 to 67-467 shall be known and may be cited as the Uniform Partnership Act of 1998.

**Source:** Laws 1997, LB 523, § 1; Laws 2016, LB1050, § 1.  
Effective date July 21, 2016.

**67-405 Supplemental principles of law.**

(1) Unless displaced by particular provisions of the Uniform Partnership Act of 1998, the principles of law and equity supplement the act.

(2) If an obligation to pay interest arises under the act and the rate is not specified, the rate is that fixed pursuant to section 45-103.

**Source:** Laws 1997, LB 523, § 5; Laws 2015, LB247, § 1.

## PART IX—CONVERSIONS AND MERGERS

**67-448.01 Domestic partnership; conversion into domestic limited liability company or foreign limited liability company; procedure; notice to holder of security interest.**

A domestic 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 partnership into such limited liability company shall be made pursuant to a plan of conversion setting forth the information required in section 21-175 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 partnership by partners who own in the aggregate more than fifty percent of the interests in the profits of such partnership. 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. A domestic partnership converting into a domestic limited liability company or a foreign limited liability company shall, at least ten business days before the articles of conversion are filed, send written notice of such conversion to the last-known address of any holder of a security interest in collateral of such partnership.

**Source:** Laws 2016, LB1050, § 2.

Effective date July 21, 2016.

**67-448.02 Domestic limited liability partnership; conversion into domestic limited liability company or foreign limited liability company; procedure; notice to holder of security interest.**

A domestic limited liability 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 liability partnership into such limited liability company shall be made pursuant to a plan of conversion setting forth the information required in section 21-175 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 liability partnership by partners who own in the aggregate more than fifty percent of the interests in the profits of such limited liability partnership. 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. A domestic limited liability partnership converting into a domestic limited liability company or a foreign limited liability company shall, at least ten business days before the articles of conversion are filed, send written notice of such conversion to the last-known address of any holder of a security interest in collateral of such limited liability partnership.

**Source:** Laws 2016, LB1050, § 3.  
Effective date July 21, 2016.

**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.

**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.

**67-456 Annual report; certificate of authority.**

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

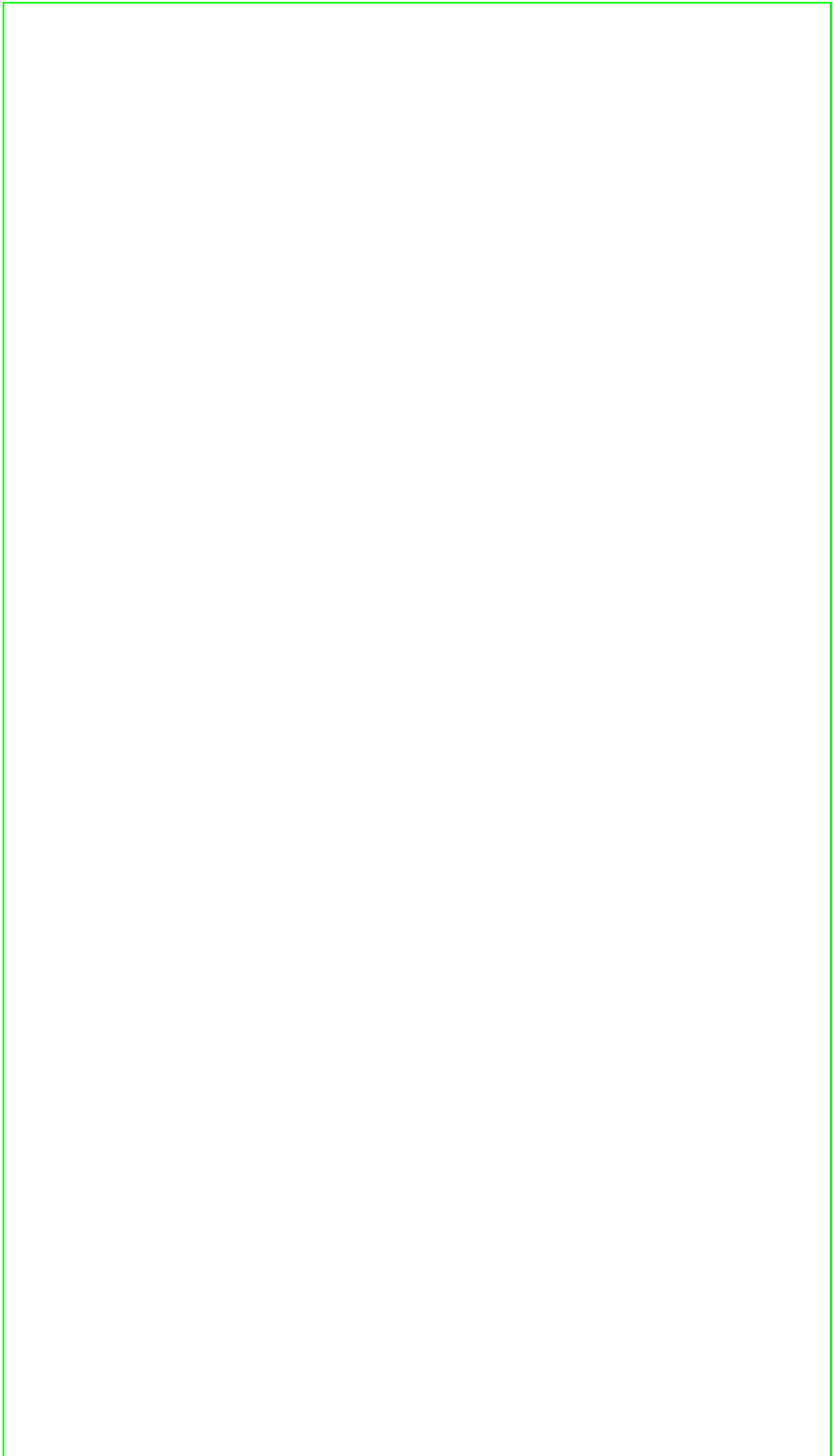
(6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

- (a) The name of the partnership and the effective date of the revocation; and
- (b) That the ground for revocation either did not exist or has been corrected.

(7) A reinstatement under subsection (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

(8) A correction or an amendment to the annual report may be filed at any time.

**Source:** Laws 1997, LB 523, § 56; Laws 2004, LB 16, § 7; Laws 2008, LB383, § 8; Laws 2014, LB774, § 5.





## CHAPTER 68

### PUBLIC ASSISTANCE

#### Article.

1. Miscellaneous Provisions. 68-130 to 68-158.
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  - (a) Disabled Persons and Family Support Act. 68-1518.
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  - (a) Welfare Reform Act. 68-1708 to 68-1735.04.
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#### ARTICLE 1

#### MISCELLANEOUS PROVISIONS

#### Section

- 68-130. Counties; maintain office and service facilities; review by department.
- 68-153. Employable recipients; terms, defined.
- 68-156. Repealed. Laws 2013, LB 156, § 3.
- 68-158. Program to provide amino acid-based elemental formulas; Department of Health and Human Services; duties; report.

#### **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 602, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238; Laws 2011, LB234, § 1.

**68-153 Employable recipients; terms, defined.**

For purposes of sections 68-151 to 68-155:

(1) Community service shall mean labor performed for a governmental agency, nonprofit corporation, or health care corporation;

(2) Employable recipient shall mean any individual who is eighteen years of age or older, who is receiving county general assistance pursuant to sections 68-131 to 68-148, who is not engaged in full-time employment or satisfactorily participating in a county-approved vocational, rehabilitation, job training, or community service program, and who is not rendered unable to work by illness or significant and substantial mental or physical incapacitation to the degree and of the duration that the illness or incapacitation prevents the person from performing designated vocational, rehabilitation, job training, or community service activities;

(3) Full-time employment shall mean being employed at least twenty-five hours per week and receiving wages, tips, and other compensation which meet the applicable federal minimum wage requirements; and

(4) Job training program shall mean vocational training in technical job skills and equivalent knowledge.

**Source:** Laws 1990, LB 422, § 3; Laws 1991, LB 227, § 3; Laws 2013, LB156, § 1.

**68-156 Repealed. Laws 2013, LB 156, § 3.****68-158 Program to provide amino acid-based elemental formulas; Department of Health and Human Services; duties; report.**

The Department of Health and Human Services shall establish a program to provide amino acid-based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non-Immunoglobulin E mediated allergies to multiple food proteins, food-protein-induced enterocolitis syndrome, eosinophilic disorders, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract, when the ordering physician has issued a written order stating that the amino acid-based elemental formula is medically necessary for the treatment of a disease or disorder. Up to fifty percent of the actual out-of-pocket cost, not to exceed twelve thousand dollars, for amino acid-based elemental formulas shall be available to an individual without fees each twelve-month period. The department shall distribute funds on a first-come, first-served basis. Nothing in this section is deemed to be an entitlement. The maximum total General Fund expenditures per year for amino acid-based elemental formulas shall not exceed two hundred fifty thousand dollars each fiscal year in FY2014-15 and FY2015-16. The Department of Health and Human Services shall provide an electronic report on the program to the Legislature annually on or before December 15 of each year.

**Source:** Laws 2014, LB254, § 3.

**ARTICLE 6  
SOCIAL SECURITY**

Section  
68-601. Social security; policy.

## Section

- 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.
- 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. Repealed. Laws 2015, LB 6, § 1.

**68-721 Repealed. Laws 2015, LB 6, § 1.**

## ARTICLE 9 MEDICAL ASSISTANCE ACT

Section

- 68-901. Medical Assistance Act; act, how cited.
- 68-906. Medical assistance; state accepts federal provisions.
- 68-907. Terms, defined.
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- 68-909. Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; exception; Medicaid Reform Council; department; powers and duties.
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- 68-972. Prenatal care; legislative findings; creation of separate program; benefits provided; department; submit state plan amendment or waiver; eligibility.
- 68-973. Improper payments; postpayment reimbursement; legislative findings.
- 68-974. Recovery audit contractors; contracts; contents; duties; health insurance premium assistance payment program; contract; department; powers and duties; form of records authorized; appeal; report.
- 68-975. Department; apply for amendment to medicaid state plan; multisystemic therapy for youth.
- 68-976. Provider with high categorical risk level; fingerprint-based criminal history record information check; Nebraska State Patrol; issue report; cost; department; powers and duties.

**68-901 Medical Assistance Act; act, how cited.**

Sections 68-901 to 68-976 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; Laws 2015, LB500, § 1; Laws 2016, LB698, § 15.  
Operative date March 31, 2016.

**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.

#### 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.

**68-911 Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.**

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

- (a) Inpatient and outpatient hospital services;
- (b) Laboratory and X-ray services;
- (c) Nursing facility services;
- (d) Home health services;
- (e) Nursing services;
- (f) Clinic services;
- (g) Physician services;
- (h) Medical and surgical services of a dentist;
- (i) Nurse practitioner services;
- (j) Nurse midwife services;
- (k) Pregnancy-related services;
- (l) Medical supplies;
- (m) Mental health and substance abuse services; and

(n) Early and periodic screening and diagnosis and treatment services for children which shall include both physical and behavioral health screening, diagnosis, and treatment services.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

- (a) Prescribed drugs;

- (b) Intermediate care facilities for persons with developmental disabilities;
- (c) Home and community-based services for aged persons and persons with disabilities;
- (d) Dental services;
- (e) Rehabilitation services;
- (f) Personal care services;
- (g) Durable medical equipment;
- (h) Medical transportation services;
- (i) Vision-related services;
- (j) Speech therapy services;
- (k) Physical therapy services;
- (l) Chiropractic services;
- (m) Occupational therapy services;
- (n) Optometric services;
- (o) Podiatric services;
- (p) Hospice services;
- (q) Mental health and substance abuse services;
- (r) Hearing screening services for newborn and infant children; and
- (s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

(4) On or before October 1, 2014, the department, after consultation with the State Department of Education, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services, as necessary, to provide that the following are direct reimbursable services when provided by school districts as part of an individualized education program or an individualized family service plan: Early and periodic screening, diagnosis, and treatment services for children; medical transportation services; mental health services; nursing services; occupational therapy services; personal care services; physical therapy services; rehabilitation services; speech therapy and other services for individuals with speech, hearing, or language disorders; and vision-related services.

**Source:** Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec. Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11; Laws 2009, LB603, § 1; Laws 2013, LB23, § 12; Laws 2013, LB556, § 5; Laws 2014, LB276, § 4.

## Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

**68-912 Limits on goods and services; considerations; procedure.**

(1) The department may establish (a) premiums, copayments, and deductibles for goods and services provided under the medical assistance program, (b) limits on the amount, duration, and scope of goods and services that recipients may receive under the medical assistance program 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.

**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 eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

**Source:** Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp., 2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3; Laws 2009, LB603, § 2; Laws 2012, LB599, § 3.



**68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers.**

(1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for persons with developmental disabilities, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only when the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4) The debt may be recovered from the estate of a recipient of medical assistance, including any real property, personal property, or other asset in which the recipient had any legal title or interest at the time of the recipient's death, to the extent of such interests. In furtherance and not in limitation of the foregoing, for purposes of this section, the estate of the recipient of medical assistance also includes assets to be transferred to a beneficiary described in section 77-2004 or 77-2005 in relation to the recipient through a revocable trust or other similar arrangement which has become irrevocable by reason of the recipient's death.

(5) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(6) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

**Source:** Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp.,2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2; Laws 2013, LB23, § 13; Laws 2015, LB72, § 4.

**68-921 Entitlement of spouse; terms, defined.**

For purposes of sections 68-921 to 68-925:

(1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for persons with developmental disabilities, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

**Source:** Laws 1988, LB 419, § 1; Laws 1989, LB 362, § 11; Laws 1991, LB 244, § 1; Laws 1996, LB 1044, § 336; Laws 1997, LB 608, § 4; Laws 2000, LB 819, § 81; R.S.1943, (2003), § 68-1038; Laws 2006, LB 1248, § 21; Laws 2007, LB185, § 3; Laws 2007, LB296, § 250; Laws 2013, LB23, § 14.

#### Cross References

Health Care Facility Licensure Act, see section 71-401.

### **68-935 Terms, defined.**

For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means any request or demand, whether under a contract or otherwise, for money or property, and whether or not the state has title to the money or property, that:

(a) Is presented to an officer, employee, or agent of the state; or

(b) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:

(i) Provides or has provided any portion of the money or property requested or demanded; or

(ii) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(3) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(4)(a) Knowing and knowingly means that a person, with respect to information:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

(b) Acts committed in a knowing manner or committed knowingly shall not require proof of a specific intent to defraud;

(5) Material means having a natural tendency to influence or be capable of influencing the payment or receipt of money or property;

(6) Obligation means an established duty, whether or not fixed, arising from (a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship, (b) a fee-based or similar relationship, (c) statute or rule or regulation, or (d) the retention of any overpayment;

(7) Person means any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(8) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medical assistance program.

**Source:** Laws 1996, LB 1155, § 68; R.S.1943, (2003), § 68-1037.02; Laws 2004, LB 1084, § 2; R.S.Supp.,2004, § 68-1074; Laws 2006, LB 1248, § 35; Laws 2013, LB277, § 1.

**68-936 Presentation of false medicaid claim; civil liability; violation of act; civil penalty; damages; costs and attorney's fees.**

(1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(c) Conspires to commit a violation of the False Medicaid Claims Act;

(d) Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of the money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt knowing that the information on the receipt is not true;

(f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state who may not lawfully sell or pledge such property; or

(g) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals, avoids, or decreases an obligation to pay or transmit money or property to the state.

(2) A person who commits a violation of the False Medicaid Claims Act is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, any such person may be subject to damages in the amount of three times the amount of the false claim because of the act of that person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons.

**Source:** Laws 1996, LB 1155, § 69; Laws 1997, LB 307, § 110; R.S.1943, (2003), § 68-1037.03; Laws 2004, LB 1084, § 3; R.S.Supp.,2004, § 68-1075; Laws 2006, LB 1248, § 36; Laws 2013, LB277, § 2.

**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.  
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.

**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.

**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.

**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.

**68-974 Recovery audit contractors; contracts; contents; duties; health insurance premium assistance payment program; contract; department; powers and duties; form of records authorized; appeal; 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 to take actions to recover any overpayments identified or make payment for any underpayment identified.

(2) Notwithstanding any other provision of law, all recovery audit contractors retained by the department when conducting a recovery audit shall:

- (a) Review claims within two years from the date of the payment;
- (b) Send a determination letter concluding an audit within sixty days after receipt of all requested material from a provider;
- (c) In any records request to a provider, furnish information sufficient for the provider to identify the patient, procedure, or location;
- (d) Develop and implement with the department a procedure in which an improper payment identified by an audit may be resubmitted as a claims adjustment;
- (e) Utilize a licensed health care professional from the area of practice being audited to establish relevant audit methodology consistent with established practice guidelines, standards of care, and state-issued medicaid provider handbooks;

(f) Provide a written notification and explanation of an adverse determination that includes the reason for the adverse determination, the medical criteria on which the adverse determination was based, an explanation of the provider's

appeal rights, and, if applicable, the appropriate procedure to submit a claims adjustment in accordance with subdivision (2)(d) of this section; and

(g) Schedule any onsite audits with advance notice of not less than ten business days and make a good faith effort to establish a mutually agreed upon time and date for the onsite audit.

(3) The department shall exclude the following from the scope of review of recovery audit contractors: (a) Claims processed or paid through a capitated medicaid managed care program; and (b) any claims that are currently being audited or that have already been audited by the recovery audit contractor or currently being audited by another entity. No payment shall be recovered in a medical necessity review in which the provider has obtained prior authorization for the service and the service was performed as authorized.

(4) The department shall contract with one or more persons to support a health insurance premium assistance payment program.

(5) The department may enter into any other contracts deemed to increase the efforts to promote the integrity of the medical assistance program.

(6) 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. Whether the contract is a contingent fee contract or otherwise, the contractor shall not recover overpayments by the department until all appeals have been completed unless there is a credible allegation of fraudulent activity by the provider, the contractor has referred the claims to the department for investigation, and an investigation has commenced. In that event, the contractor may recover overpayment prior to the conclusion of the appeals process. In any contract between the department and a recovery audit contractor, the payment or fee provided for identification of overpayments shall be the same provided for identification of underpayments. 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.

(7) All amounts recovered and savings generated as a result of this section shall be returned to the medical assistance program.

(8) Records requests made by a recovery audit contractor in any one-hundred-eighty-day period shall be limited to not more than five percent of the number of claims filed by the provider for the specific service being reviewed, not to exceed two hundred records. The contractor shall allow a provider no less than forty-five days to respond to and comply with a record request. If the contractor can demonstrate a significant provider error rate relative to an audit of records, the contractor may make a request to the department to initiate an additional records request regarding the subject under review for the purpose of further review and validation. The contractor shall not make the request until the time period for the appeals process has expired.

(9) On an annual basis, the department shall require the recovery audit contractor to compile and publish on the department's Internet web site metrics related to the performance of each recovery audit contractor. Such metrics shall include: (a) The number and type of issues reviewed; (b) the number of medical records requested; (c) the number of overpayments and the aggregate dollar amounts associated with the overpayments identified by the

contractor; (d) the number of underpayments and the aggregate dollar amounts associated with the identified underpayments; (e) the duration of audits from initiation to time of completion; (f) the number of adverse determinations and the overturn rating of those determinations in the appeal process; (g) the number of appeals filed by providers and the disposition status of such appeals; (h) the contractor's compensation structure and dollar amount of compensation; and (i) a copy of the department's contract with the recovery audit contractor.

(10) The recovery audit contractor, in conjunction with the department, shall perform educational and training programs annually for providers that encompass a summary of audit results, a description of common issues, problems, and mistakes identified through audits and reviews, and opportunities for improvement.

(11) Providers shall be allowed to submit records requested as a result of an audit in electronic format which shall include compact disc, digital versatile disc, or other electronic format deemed appropriate by the department or via facsimile transmission, at the request of the provider.

(12)(a) A provider shall have the right to appeal a determination made by the recovery audit contractor.

(b) The contractor shall establish an informal consultation process to be utilized prior to the issuance of a final determination. Within thirty days after receipt of notification of a preliminary finding from the contractor, the provider may request an informal consultation with the contractor to discuss and attempt to resolve the findings or portion of such findings in the preliminary findings letter. The request shall be made to the contractor. The consultation shall occur within thirty days after the provider's request for informal consultation, unless otherwise agreed to by both parties.

(c) Within thirty days after notification of an adverse determination, a provider may request an administrative appeal of the adverse determination as set forth in the Administrative Procedure Act.

(13) The department shall by December 1 of each year 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. Such report shall be filed electronically.

(14) For purposes of this section:

(a) Adverse determination means any decision rendered by the recovery audit contractor that results in a payment to a provider for a claim for service being reduced or rescinded;

(b) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(c) 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; Laws 2015, LB315, § 1.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**68-975 Department; apply for amendment to medicaid state plan; multisystemic therapy for youth.**

(1) On or before May 1, 2016, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to amend the medicaid state plan to provide for utilization of money to allow for payments for multisystemic therapy for youth who are eligible for the medical assistance program 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, 2015.

(2) For purposes of this section, CHIP means the Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., as such section existed on January 1, 2015.

**Source:** Laws 2015, LB500, § 2.

**68-976 Provider with high categorical risk level; fingerprint-based criminal history record information check; Nebraska State Patrol; issue report; cost; department; powers and duties.**

(1)(a) Any provider with a high categorical risk level as determined by the Centers for Medicare and Medicaid Services or the medicaid assistance program established pursuant to the Medical Assistance Act shall be subject to a fingerprint-based criminal history record information check.

(b) Such provider who is an individual, or any individual with at least a five percent direct or indirect ownership interest in any such provider, shall provide his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall undertake a search for fingerprint-based criminal history record information relating to such provider, including transmittal of the fingerprints to the Federal Bureau of Investigation for a national fingerprint-based criminal history record information check.

(c) The fingerprint-based criminal history record information check shall include information concerning the provider from federal repositories of such information and repositories of such information in other states, if authorized by federal law.

(d) The Nebraska State Patrol shall issue a report to the department that includes the fingerprint-based criminal history record information concerning the provider.

(e) The provider or individual being screened shall pay the actual cost of the fingerprinting and fingerprint-based criminal history record information check.

(2) The department shall maintain a record of the results of the fingerprint-based criminal history record information check.

(3) The department may deny or terminate the enrollment of:

(a) Any provider who is an individual who does not pass the national fingerprint-based criminal history record information check; or

(b) Any provider in which an individual with at least a five percent direct or indirect ownership interest in the provider does not pass the national fingerprint-based criminal history record information check. Criteria for not passing the fingerprint-based criminal history record information check includes at least the following: (i) Any criminal conviction within the last ten years related to the provider's involvement with the federal Health Insurance for the Aged



Act, 42 U.S.C. 1305 et seq., any program or assistance set forth in Chapter 68, or the federal Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa, as such act, laws, and section existed on January 1, 2016; or (ii) any conviction involving fraudulent activities.

**Source:** Laws 2016, LB698, § 16.

Operative date March 31, 2016.

## ARTICLE 10

### ASSISTANCE, GENERALLY

#### (a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

Section

68-1006.01. Personal needs allowance; amount authorized.

#### (b) PROCEDURE AND PENALTIES

68-1017. Assistance; violations; penalties.

68-1017.01. Supplemental Nutrition Assistance Program; violations; penalties.

68-1017.02. Supplemental Nutrition Assistance Program; department; duties; state outreach plan; report; contents; person ineligible; when.

#### (h) NON-UNITED-STATES CITIZENS

68-1070. Repealed. Laws 2011, LB 465, § 2.

#### (a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

##### **68-1006.01 Personal needs allowance; amount authorized.**

The Department of Health and Human Services shall include in the standard of need for eligible aged, blind, and disabled persons at least sixty dollars per month for a personal needs allowance if such persons reside in an alternative living arrangement.

For purposes of this section, an alternative living arrangement shall include board and room, a boarding home, a certified adult family home, a licensed assisted-living facility, a licensed residential child-caring agency as defined in section 71-1926, a licensed center for the developmentally disabled, and a long-term care facility.

**Source:** Laws 1991, LB 57, § 1; Laws 1996, LB 1044, § 308; Laws 1997, LB 608, § 3; Laws 1999, LB 119, § 1; Laws 2000, LB 819, § 79; Laws 2013, LB265, § 37; Laws 2015, LB366, § 1.

#### (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 IV misdemeanor; (b) if the aggregate value of all funds or other benefits obtained or attempted to be obtained is five hundred dollars or more but less than one thousand five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (c) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is one thousand 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; Laws 2015, LB605, § 79.

**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 IV misdemeanor if the value of the Supplemental Nutrition Assistance Program benefits, electronic benefit cards, or authorizations is less than five hundred dollars, shall be a Class III misdemeanor if the value is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value is one thousand 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 IV misdemeanor if the value of the Supplemental Nutrition Assistance Program benefits, electronic benefit cards, or authorizations is less than five hundred dollars, shall be a Class III misdemeanor if the value is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value is one thousand 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; Laws 2015, LB605, § 80.

**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 subsection, 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.

(h) NON-UNITED-STATES CITIZENS

**68-1070 Repealed. Laws 2011, LB 465, § 2.**

**ARTICLE 11**

**AGING**

(b) AGING NEBRASKANS TASK FORCE

Section

- 68-1107. Aging Nebraskans Task Force; created; purposes; executive committee; members; duties; statewide strategic plan for long-term care services; creation; consideration.
- 68-1108. Aging Nebraskans Task Force; report; Department of Health and Human Services; report; state plan; presentation.
- 68-1109. Aging Nebraskans Task Force; termination.
- 68-1110. Aging Nebraskans Task Force; state plan regarding Alzheimer's and related disorders; duties.

(c) AGING AND DISABILITY RESOURCE CENTER  
DEMONSTRATION PROJECT ACT

- 68-1111. Act, how cited.
- 68-1112. Legislative findings.
- 68-1113. Purpose of act.
- 68-1114. Terms, defined.
- 68-1115. Grants for aging and disability resource center demonstration projects.
- 68-1116. Aging and disability resource center demonstration project; services.
- 68-1117. Proposal to establish aging and disability resource center demonstration project; contents; joint proposal authorized.
- 68-1118. Department; review proposals; selection; report.
- 68-1119. Reimbursement; schedule.

(b) AGING NEBRASKANS TASK FORCE

**68-1107 Aging Nebraskans Task Force; created; purposes; executive committee; members; duties; statewide strategic plan for long-term care services; creation; consideration.**

(1) The Aging Nebraskans Task Force is created. The purposes of the task force are (a) to develop and facilitate implementation of a statewide strategic plan for addressing the needs of the aging population in the state and (b) to develop a state plan regarding individuals with Alzheimer's or related disorders as provided in section 68-1110. The task force shall provide a forum for collaboration among state, local, community, public, and private stakeholders in long-term care programs.

(2)(a) The executive committee of the task force shall include as voting members the chairperson of the Health and Human Services Committee of the Legislature, a member of the Appropriations Committee of the Legislature appointed by the Executive Board of the Legislative Council, a member of the

Health and Human Services Committee of the Legislature appointed by the Executive Board of the Legislative Council, a member of the Legislature's Planning Committee appointed by the Executive Board of the Legislative Council, and an at-large member appointed by the Executive Board of the Legislative Council. The voting members of the executive committee shall choose a chairperson and vice-chairperson from among the voting members.

(b) The chief executive officer of the Department of Health and Human Services or his or her designee and the Chief Justice of the Supreme Court or his or her designee shall be nonvoting, ex officio members of the executive committee of the task force.

(c) The remaining four members of the task force shall be nonvoting members appointed by the executive committee of the task force through an application and selection process, representing stakeholders in the long-term care system and may include a representative of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, representatives of health care providers, elder law attorneys, representatives of the long-term care ombudsman program, health care economists, geriatric specialists, family caregivers of seniors in at-home care, providers of services to the elderly, seniors currently or previously in institutional care, and aging advocacy organizations.

(3) The executive committee of the task force shall advise the task force regarding the interaction among the three branches of government related to long-term care programs and services. The members of the executive committee shall each represent his or her own branch of government, and no member of the executive committee shall participate in actions that could be deemed to be the exercise of the duties and prerogatives of another branch of government or that improperly delegate the powers and duties of any branch of government to another branch of government.

(4) The task force shall work with administrators of area agencies on aging, nursing home and assisted-living residence providers, hospitals, rehabilitation centers, managed care companies, senior citizen centers, community stakeholders, advocates for elder services and programs, the Center for Public Affairs Research of the College of Public Affairs and Community Service at the University of Nebraska at Omaha, and seniors statewide to establish effective community collaboration for informed decisionmaking that supports the provisions of effective and efficient long-term care services.

(5) The task force shall create a statewide strategic plan for long-term care services in Nebraska which shall consider, but not be limited to:

(a) Promotion of independent living through provision of long-term care services and support that enable an individual to live in the setting of his or her choice;

(b) Provision of leadership to support sound fiscal management of long-term care budgets so that Nebraska will be able to meet the increasing demand for long-term care services as a growing portion of the state's population reaches the age of eighty years;

(c) Expedited creation of workforce development and training programs specific to the needs of and in response to Nebraska's growing aging population;

(d) The identification of gaps in the service delivery system that contribute to the inefficient and ineffective delivery of services; and



(e) Development of a process for evaluating the quality of residential and home and community-based long-term care services and support.

**Source:** Laws 2014, LB690, § 2; Laws 2015, LB320, § 10.

**68-1108 Aging Nebraskans Task Force; report; Department of Health and Human Services; report; state plan; presentation.**

(1) On or before December 15, 2014, the Aging Nebraskans Task Force shall present electronically to the Legislature a report of recommendations for the statewide strategic plan described in section 68-1107. The Department of Health and Human Services shall also annually report electronically to the Legislature the percentage growth of medicaid spending for people over sixty-five years of age for no fewer than five years following acceptance of the application to the State Balancing Incentive Payments Program pursuant to section 81-3138.

(2) The task force shall develop a state plan as provided in section 68-1110 and electronically deliver the state plan to the Governor and the Legislature on or before December 15, 2016. The task force shall make a presentation of the state plan to the Health and Human Services Committee of the Legislature on or before December 15, 2016.

**Source:** Laws 2014, LB690, § 3; Laws 2015, LB320, § 11.

**68-1109 Aging Nebraskans Task Force; termination.**

The Aging Nebraskans Task Force terminates on January 1, 2017, unless extended by the Legislature.

**Source:** Laws 2014, LB690, § 4; Laws 2015, LB320, § 12.

**68-1110 Aging Nebraskans Task Force; state plan regarding Alzheimer's and related disorders; duties.**

(1) The Aging Nebraskans Task Force shall develop a state plan regarding individuals with Alzheimer's and related disorders. The task force shall work with the chief executive officer of the Department of Health and Human Services, the Public Guardian, the area agencies on aging, organizations advocating for patients and caregivers for patients with Alzheimer's or related disorders, the law enforcement community, patients with Alzheimer's or related disorders, caregivers for patients with Alzheimer's or related disorders, client advocacy organizations, health care provider advocacy organizations, private health care providers, and community-based health professionals.

(2) The task force shall:

(a) Assess the current and future impact of Alzheimer's and related disorders on residents of the state;

(b) Determine the existing services and resources in the state that address the needs of individuals with Alzheimer's and related disorders and their families and caregivers; and

(c) Develop recommendations to respond to escalating needs for the services and resources described in subdivision (b) of this subsection.

(3) In fulfilling the duties described in subsection (1) of this section, the task force shall examine:

(a) Trends and needs in the state relating to populations with Alzheimer's or related disorders, including (i) the state's role in the provision of long-term care, (ii) family caregiver support, (iii) the provision of early-stage diagnoses, assistance, support, and medical services, (iv) younger onset of Alzheimer's or related disorders, (v) ethnic populations at higher risk, and (vi) risk reduction;

(b) Existing services, resources, and capacity available to individuals with Alzheimer's or related disorders, including:

(i) The type, cost, availability, and adequacy of services, including, (A) home and community-based resources, (B) respite care, (C) residential long-term care, and (D) geriatric-psychiatric units for individuals with associated behavioral disorders;

(ii) Dementia-specific training requirements for individuals who are employed to provide care to individuals with Alzheimer's or related disorders;

(iii) Quality of care measures for services delivered across the continuum of care;

(iv) The capacity of public safety and law enforcement to respond to individuals with Alzheimer's or related disorders; and

(v) State support to institutions of higher learning for research on Alzheimer's or related disorders;

(c) The need for state policy or action in order to provide clear, coordinated services and support to individuals with Alzheimer's or related disorders and their families and caregivers; and

(d) Strategies to identify gaps in services.

**Source:** Laws 2015, LB320, § 13.

#### (c) AGING AND DISABILITY RESOURCE CENTER DEMONSTRATION PROJECT ACT

##### **68-1111 Act, how cited.**

Sections 68-1111 to 68-1119 shall be known and may be cited as the Aging and Disability Resource Center Demonstration Project Act.

**Source:** Laws 2015, LB320, § 1.

##### **68-1112 Legislative findings.**

The Legislature finds that:

(1) The state should anticipate and prepare for significant growth in the number of older Nebraskans and the future needs of persons with disabilities, both of which will require costly long-term care services;

(2) The state should improve access to existing services and support for persons with disabilities;

(3) The state should provide a streamlined approach to identify the needs of older Nebraskans and persons with disabilities through uniform assessments and a single point of contact; and

(4) Nebraskans would benefit from statewide public information campaigns to educate older Nebraskans, persons with disabilities, and their caregivers on the availability of services and support.

**Source:** Laws 2015, LB320, § 2.

**68-1113 Purpose of act.**

The purpose of the Aging and Disability Resource Center Demonstration Project Act is to evaluate the feasibility of establishing aging and disability resource centers statewide to provide information about long-term care services and support available in the home and community for older Nebraskans or persons with disabilities, family caregivers, and persons who request information or assistance on behalf of others and to assist eligible individuals to access the most appropriate public and private resources to meet their long-term care needs.

**Source:** Laws 2015, LB320, § 3.

**68-1114 Terms, defined.**

For purposes of the Aging and Disability Resource Center Demonstration Project Act:

(1) Aging and disability resource center means a community-based entity established to provide information about long-term care services and support and to facilitate access to options counseling to assist eligible individuals and their representatives in identifying the most appropriate services to meet their long-term care needs;

(2) Area agency on aging has the meaning found in section 81-2208;

(3) Center for independent living has the definition found in 29 U.S.C. 796a, as such section existed on January 1, 2015;

(4) Department means the State Unit on Aging of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or any successor agency designated by the state to fulfill the responsibilities of section 305(a)(1) of the federal Older Americans Act of 1965, 42 U.S.C 3025(a)(1), as such section existed on January 1, 2015;

(5) Eligible individual means a person who has lost, never acquired, or has one or more conditions that affect his or her ability to perform basic activities of daily living that are necessary to live independently;

(6) Options counseling means a service that assists an eligible individual in need of long-term care and his or her representatives to make informed choices about the services and settings which best meet his or her long-term care needs and that uses uniform assessments and encourages the widest possible use of community-based options to allow an eligible individual to live as independently as possible in the setting of his or her choice;

(7) Representative means a person designated as a legal guardian, designated by a power of attorney or a health care power of attorney, or chosen by law, by a court, or by an eligible individual seeking services, but use of the term representative shall not be construed to disqualify an individual who retains all legal and personal autonomy;

(8) Uniform assessment means a single standardized tool used to assess a defined population at a specific time; and

(9) University Center for Excellence in Developmental Disability Education, Research and Service means the federally designated University Center for Excellence in Developmental Disability Education, Research and Service of the Munroe-Meyer Institute at the University of Nebraska Medical Center.

**Source:** Laws 2015, LB320, § 4.

**68-1115 Grants for aging and disability resource center demonstration projects.**

The department shall award grants for three aging and disability resource center demonstration projects. The department shall adopt criteria for evaluating proposals to operate an aging and disability resource center demonstration project based on the requirements in section 68-1116 and release a request for proposals within sixty days after August 30, 2015.

**Source:** Laws 2015, LB320, § 5.

**68-1116 Aging and disability resource center demonstration project; services.**

The aging and disability resource center demonstration projects shall be established to evaluate the feasibility of establishing aging and disability resource centers statewide as a means of promoting appropriate, effective, and efficient use of long-term care resources. The aging and disability resource center demonstration projects shall operate through June 30, 2018. Each aging and disability resource center demonstration project shall provide one or more of the following services:

(1) Comprehensive information on the full range of available public and private long-term care programs, options, financing, service providers, and resources within a community, including information on the availability of integrated long-term care;

(2) Assistance in accessing and applying for public benefits programs;

(3) Options counseling;

(4) A convenient point of entry to the range of publicly supported long-term care programs for an eligible individual;

(5) A process for identifying unmet service needs in communities and developing recommendations to respond to those unmet needs;

(6) Facilitation of person-centered transition support to assure that an eligible individual is able to find the services and support that are most appropriate to his or her need;

(7) Mobility management to promote the appropriate use of public transportation services by a person who does not own or is unable to operate an automobile; and

(8) A home care provider registry that will provide a person who needs home care with the names of home care providers and information about his or her rights and responsibilities as a home care consumer.

**Source:** Laws 2015, LB320, § 6.

**68-1117 Proposal to establish aging and disability resource center demonstration project; contents; joint proposal authorized.**

(1) Within sixty days after the release date of a request for proposals under section 68-1115, an area agency on aging, after consultation with a collaboration of organizations that serve aging persons and persons with disabilities, including, but not limited to, centers for independent living and the University Center for Excellence in Developmental Disability Education, Research and Service, and with other organizations, including, but not limited to, organizations providing advocacy, protection, and safety for aging persons and persons with disabilities, may submit to the department a proposal to establish an aging

and disability resource center demonstration project. The proposal shall specify how organizations currently serving eligible individuals will be engaged in the process of delivery of services through the aging and disability resource center demonstration project. The proposal shall be developed in consultation with eligible individuals and their representatives. The proposal shall indicate how resources will be utilized by the collaborating organizations to fulfill the responsibilities of an aging and disability resource center demonstration project.

(2) Two or more area agencies on aging may develop a joint proposal to establish an aging and disability resource center demonstration project to serve all or a portion of their planning-and-service areas. A joint proposal shall provide information on how the services described in section 68-1116 will be provided in the counties to be served by the aging and disability resource center demonstration project described in the joint proposal.

**Source:** Laws 2015, LB320, § 7.

**68-1118 Department; review proposals; selection; report.**

Within thirty days after receipt of a proposal developed pursuant to subsection (1) or (2) of section 68-1117, the department shall review the proposal and determine whether the proposal is eligible for funding. The department shall select three proposals for funding. The department shall enter into a contract with an independent institution having experience in evaluating aging and disability programs for an evaluation of the aging and disability resource center demonstration projects. The contract shall require that a report evaluating the demonstration projects be presented to the Clerk of the Legislature prior to December 1 of 2016, 2017, and 2018.

**Source:** Laws 2015, LB320, § 8.

**68-1119 Reimbursement; schedule.**

The department shall reimburse each area agency on aging operating an aging and disability resource center demonstration project on a schedule agreed to by the department and the area agency on aging. Such reimbursement shall be made from (1) state funds appropriated by the Legislature, (2) federal funds allocated to the department for the purpose of establishing and operating aging and disability resource centers, and (3) other funds as available.

**Source:** Laws 2015, LB320, § 9.

**ARTICLE 12  
SOCIAL SERVICES**

Section	
68-1201.	Eligibility determination; exclusion of certain assets and income.
68-1202.	Social services; services included.
68-1204.	Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.
68-1206.	Social services; administration; contracts; payments; duties.
68-1207.	Department of Health and Human Services; public child welfare services; supervise; department; pilot project; caseload requirements; case plan developed.
68-1207.01.	Department of Health and Human Services; caseloads report; contents.
68-1211.	Case management of child welfare services; legislative findings and declarations.

## Section

- 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; extension of contract.
- 68-1213. Pilot project; evaluation by Legislature.
- 68-1214. Case managers; training program; department; duties; training curriculum; contents.

**68-1201 Eligibility determination; exclusion of certain assets and income.**

In determining eligibility for the program for aid to dependent children pursuant to section 43-512 as administered by the State of Nebraska pursuant to the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., for the low-income home energy assistance program administered by the State of Nebraska pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, for the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and for the child care subsidy program established pursuant to section 68-1202, the following shall not be included in determining assets or income:

(1) Assets in or income from an educational savings account, a Coverdell educational savings account described in 26 U.S.C. 530, a qualified tuition program established pursuant to 26 U.S.C. 529, or any similar savings account or plan established to save for qualified higher education expenses as defined in section 85-1802;

(2) Income from scholarships or grants related to postsecondary education, whether merit-based, need-based, or a combination thereof;

(3) Income from postsecondary educational work-study programs, whether federally funded, funded by a postsecondary educational institution, or funded from any other source;

(4) Assets in or income from an account under a qualified program as provided in section 77-1402;

(5) Income received for participation in grant-funded research on the impact that income has on the development of children in low-income families, except that such exclusion of income must not exceed four thousand dollars per year for a maximum of four years and such exclusion shall only be made if the exclusion is permissible under federal law for each program referenced in this section. No such exclusion shall be made for such income on or after December 31, 2022; and

(6) Income from any tax credits received pursuant to the School Readiness Tax Credit Act.

**Source:** Laws 2014, LB359, § 1; Laws 2015, LB591, § 10; Laws 2016, LB889, § 8; Laws 2016, LB1081, § 2.  
Effective date July 21, 2016.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB889, section 8, with LB1081, section 2, to reflect all amendments.

**Cross References**

**School Readiness Tax Credit Act**, see section 77-3601.

**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 an intellectual disability, 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; Laws 2013, LB23, § 15.

**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.

**68-1206 Social services; administration; contracts; payments; duties.**

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services. As part of the provision of social services authorized by section 68-1202, the department shall participate in the federal child care assistance program under 42 U.S.C. 618, as such section existed on January 1, 2013, and provide child care assistance to families with incomes up to one hundred twenty-five percent of the federal poverty level for FY2013-14 and one hundred thirty percent of the federal poverty level for FY2014-15 and each fiscal year thereafter.

(2) As part of the provision of social services authorized by this section and section 68-1202, the department shall participate in the federal Child Care

Subsidy program. In determining ongoing eligibility for this program, ten percent of a household's gross earned income shall be disregarded after twelve continuous months on the program and at each subsequent redetermination. At redetermination of eligibility, if a family's income exceeds one hundred thirty percent of the federal poverty level, the family shall continue to receive transitional child care assistance for up to twenty-four consecutive months or until the family income exceeds one hundred eighty-five percent of the federal poverty level. If a family's income falls to one hundred thirty percent of the federal poverty level or below, the twenty-four-month time limit in this subsection shall cease to apply until the family becomes eligible for transitional child care assistance. The amount of such child care assistance shall be based on a cost-shared plan between the recipient family and the state and shall be based on a sliding-scale methodology. A recipient family may be required to contribute a percentage of such family's gross income for child care that is no more than the cost-sharing rates in the transitional child care assistance program as of January 1, 2015, for those no longer eligible for cash assistance as provided in section 68-1724. Initial program eligibility standards shall not be impacted by the provisions of this subsection.

(3) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule may also provide tiered rates based upon a quality scale rating of step three or higher under the Step Up to Quality Child Care Act. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

**Source:** Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279; Laws 2013, LB507, § 15; Laws 2014, LB359, § 3; Laws 2015, LB81, § 1.

#### Cross References

Step Up to Quality Child Care Act, see section 71-1952.

**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 a foster family home as defined in section 71-1901, a residential child-caring agency as defined in section 71-1926, 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. Such case plan shall clearly indicate, when appropriate, that children are receiving services to prevent out-of-home placement and that, absent preventive services, foster care is the planned arrangement for the child.

(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; Laws 2013, LB265, § 38; Laws 2013, LB269, § 8.

**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 electronically 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; Laws 2013, LB222, § 22.

#### **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.

**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; extension of contract.**

(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) Before June 30, 2014, the department may extend the contract for the pilot project described in subsection (2) of this section. The lead agency shall also comply with the requirements of section 43-4204.

**Source:** Laws 2012, LB961, § 2; Laws 2014, LB660, § 1.

#### **68-1213 Pilot project; evaluation by Legislature.**

If the pilot project described in section 68-1212 is extended by the Department of Health and Human Services, an evaluation of the pilot project shall be completed by the Legislature prior to December 31, 2014. The Legislature shall utilize all necessary resources, including the hiring of a consultant if deemed necessary. The department and any child welfare entity which has contracted with the department shall provide all data and information to the Legislature to assist in the evaluation.

**Source:** Laws 2014, LB660, § 2.

#### **68-1214 Case managers; training program; department; duties; training curriculum; contents.**

To facilitate consistency in training all case managers and allow for Title IV-E reimbursement for case manager training under Title IV-E of the federal Social Security Act, as amended, the same program for initial training of case managers shall be utilized for all case managers, whether they are employed by the department or by an organization under contract with the department. The initial training of all case managers shall be provided by the department or one or more organizations under contract with the department. The department shall create a formal system for measuring and evaluating the quality of such training. All case managers shall complete a formal assessment process after initial training to demonstrate competency prior to assuming responsibilities as a case manager. The training curriculum for case managers shall include, but not be limited to: (1) An understanding of the benefits of utilizing evidence-based and promising casework practices; (2) the importance of guaranteeing service providers' fidelity to evidence-based and promising casework practices;



and (3) a commitment to evidence-based and promising family-centered case-work practices that utilize a least restrictive approach for children and families.

**Source:** Laws 2014, LB853, § 45.

## ARTICLE 15

### DISABLED PERSONS AND FAMILY SUPPORT

#### (a) DISABLED PERSONS AND FAMILY SUPPORT ACT

Section

68-1518. Department; report; contents.

#### (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.

## ARTICLE 16

### HOMELESS SHELTER ASSISTANCE

Section

68-1604. Homeless Shelter Assistance Trust Fund; created; use; investment.

##### **68-1604 Homeless Shelter Assistance Trust Fund; created; use; investment.**

The Homeless Shelter Assistance Trust Fund is hereby created. The fund shall include the proceeds raised from the documentary stamp tax and remitted for such fund pursuant to section 76-903 and transfers authorized by the Legislature. Money remitted to such fund shall be used by the department (1) for grants to eligible shelter providers as set out in section 68-1605 for the purpose of assisting in the alleviation of homelessness, to provide temporary and permanent shelters for homeless persons, to encourage the development of projects which link housing assistance to programs promoting the concept of self-sufficiency, and to address the needs of the migrant farmworker and (2) to aid in defraying the expenses of administering the Homeless Shelter Assistance Trust Fund Act, which shall not exceed seventy-five thousand dollars in any fiscal year.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1992, LB 1192, § 4; Laws 1994, LB 1066, § 62; Laws 2001, LB 516, § 2; Laws 2005, LB 301, § 8; Laws 2013, LB199, § 28.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

Section

- 68-1708. Act, how cited.
- 68-1713. Department of Health and Human Services; implementation of policies; transitional health care benefits.
- 68-1721. Principal wage earner and other nonexempt members of applicant family; duties.
- 68-1726. Assistance under act; eligibility factors.
- 68-1735. Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty years of age; activities authorized.
- 68-1735.01. Creating self-sufficiency contract and meeting work activity requirement; applicant; activities authorized.
- 68-1735.02. Department of Health and Human Services; report; contents.
- 68-1735.03. Legislative intent.
- 68-1735.04. Repealed. Laws 2016, LB1081, § 8.

(a) WELFARE REFORM ACT

**68-1708 Act, how cited.**

Sections 68-1708 to 68-1735.03 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; Laws 2016, LB1081, § 3.  
Effective date July 21, 2016.

**68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits.**

(1) The Department of Health and Human Services shall implement the following policies:

- (a) Permit Work Experience in Private for-Profit Enterprises;
- (b) Permit Job Search;
- (c) Permit Employment to be Considered a Program Component;
- (d) Make Sanctions More Stringent to Emphasize Participant Obligations;
- (e) Alternative Hearing Process;
- (f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;
- (g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;
- (h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;
- (i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;

- (j) Require Adults to Ensure that Children in the Family Unit Attend School;
- (k) Encourage Minor Parents to Live with Their Parents;
- (l) Establish a Resource Limit of \$4,000 for a single individual and \$6,000 for two or more individuals for ADC;
- (m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;
- (n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;
- (o) Establish the Supplemental Nutrition Assistance Program as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;
- (p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;
- (q) Adopt an Earned Income Disregard described in section 68-1726 in the ADC Program, One Hundred Dollars in the Related Medical Assistance Program, and Income and Assets Described in section 68-1201;
- (r) Disregard Financial Assistance Described in section 68-1201 and Other Financial Assistance Intended for Books, Tuition, or Other Self-Sufficiency Related Use;
- (s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility;
- (t) Make ADC a Time-Limited Program; and
- (u) Adopt an Unearned Income Disregard described in section 68-1201 in the ADC Program, the Supplemental Nutrition Assistance Program, and the Child Care Subsidy Program established pursuant to section 68-1202.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

**Source:** Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6; Laws 2009, LB288, § 30; Laws 2014, LB359, § 4; Laws 2015, LB607, § 2; Laws 2016, LB1081, § 4.  
Effective date July 21, 2016.

**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.

**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; Laws 2016, LB1081, § 5.

Effective date July 21, 2016.

#### **68-1726 Assistance under act; eligibility factors.**

Based on the comprehensive assets assessment, each individual and family receiving assistance under the Welfare Reform Act shall reach for his or her highest level of economic self-sufficiency or the family's highest level of economic self-sufficiency. The following eligibility factors shall apply:

(1) Financial resources, excluding the primary home and furnishings and the primary automobile, shall not exceed four thousand dollars in value for a single individual and six thousand dollars in value for two or more individuals;

(2) Available resources, including, but not limited to, savings accounts and real estate, shall be used in determining financial resources, except that income and assets described in sections 68-1201 and 68-1713 shall not be included in determination of available resources under this section;

(3) Income received by family members, except income earned by children attending school and except as provided in section 68-1201, shall be considered

in determining total family income. Income earned by an individual or a family by working shall be treated differently than unearned income in determining the amount of cash assistance as follows:

(a) Earned income shall be counted in determining the level of cash assistance after disregarding an amount of earned income as follows:

(i) Twenty percent of gross earned income shall be disregarded to test for eligibility during the application process for aid to dependent children assistance; and

(ii) For aid to dependent children program participants and for applicants after eligibility has been established, fifty percent of the gross earned income shall be disregarded;

(b) Financial assistance provided by other programs that support the transition to economic self-sufficiency shall be considered to the extent the payments are intended to provide for life's necessities; and

(c) Financial assistance or those portions of it intended for books, tuition, or other self-sufficiency-related expenses shall not be counted in determining financial resources. Such assistance shall include, but not be limited to, school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, income or assets described in section 68-1201, and education-related loans or other loans that are expected to be repaid; and

(4) Individuals and families shall pursue potential sources of economic support, including, but not limited to, unemployment compensation and child support.

**Source:** Laws 1994, LB 1224, § 26; Laws 1997, LB 864, § 15; Laws 2014, LB359, § 5; Laws 2015, LB607, § 3; Laws 2016, LB1081, § 6.  
Effective date July 21, 2016.

**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.

**68-1735.01 Creating self-sufficiency contract and meeting work activity requirement; applicant; 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 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; Laws 2013, LB240, § 1.

#### **68-1735.02 Department of Health and Human Services; report; contents.**

The Department of Health and Human Services shall submit electronically an annual report 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; Laws 2013, LB222, § 23.

#### **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.



**68-1735.04 Repealed. Laws 2016, LB1081, § 8.**

## ARTICLE 18

### ICF/DD REIMBURSEMENT PROTECTION ACT

#### Section

68-1801.	Act, how cited.
68-1802.	Terms, defined.
68-1803.	Tax; rate; collection; report.
68-1804.	ICF/DD Reimbursement Protection Fund; created; use; allocation; investment; report.
68-1805.	State medicaid plan; application for amendment; tax; when due.
68-1806.	Collection of tax; discontinued; when; effect.
68-1806.01.	Tax; use.
68-1807.	Failure to pay tax; penalty.
68-1808.	Refund; procedure.
68-1809.	Rules and regulations.

#### **68-1801 Act, how cited.**

Sections 68-1801 to 68-1809 shall be known and may be cited as the ICF/DD Reimbursement Protection Act.

**Source:** Laws 2004, LB 841, § 2; Laws 2013, LB23, § 16.

#### **68-1802 Terms, defined.**

For purposes of the ICF/DD Reimbursement Protection Act:

- (1) Department means the Department of Health and Human Services;
- (2) Intermediate care facility for persons with developmental disabilities has the definition found in section 71-421;
- (3) Medical assistance program means the program established pursuant to the Medical Assistance Act; and
- (4) Net revenue means the revenue paid to an intermediate care facility for persons with developmental disabilities for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

**Source:** Laws 2004, LB 841, § 3; Laws 2006, LB 1248, § 72; Laws 2007, LB296, § 292; Laws 2013, LB23, § 17.

#### Cross References

Medical Assistance Act, see section 68-901.

#### **68-1803 Tax; rate; collection; report.**

(1) Each intermediate care facility for persons with developmental disabilities shall pay a tax equal to a percentage of its net revenue for the most recent State of Nebraska fiscal year. The percentage shall be (a) six percent prior to January 1, 2008, (b) five and one-half percent beginning January 1, 2008, through September 30, 2011, and (c) six percent beginning October 1, 2011.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for persons with

developmental disabilities, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for persons with developmental disabilities which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

**Source:** Laws 2004, LB 841, § 4; Laws 2006, LB 1248, § 73; Laws 2007, LB292, § 2; Laws 2013, LB23, § 18.

**68-1804 ICF/DD Reimbursement Protection Fund; created; use; allocation; investment; report.**

(1) The ICF/DD 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) Beginning July 1, 2014, the department shall use the ICF/DD Reimbursement Protection Fund, including the matching federal financial participation under Title XIX of the Social Security Act, as amended, for purposes of enhancing rates paid under the medical assistance program to intermediate care facilities for persons with developmental disabilities and for an annual contribution to community-based programs for persons with developmental disabilities as specified in subsection (4) of this section, exclusive of the reimbursement paid under the medical assistance program and any other state appropriations to intermediate care facilities for persons with developmental disabilities.

(3) For FY2011-12 through FY2013-14, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit to the ICF/DD 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 persons with developmental disabilities 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 persons with developmental disabilities, in addition to any continuation appropriations percentage increase provided by the Legislature to nongovernmental intermediate care facilities for persons with developmental disabilities 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 persons with developmental disabilities; and

(e) Fifth, the remainder of the proceeds to the General Fund.

(4) For FY2014-15 and each fiscal year thereafter, the ICF/DD Reimbursement Protection Fund shall be used as follows:

(a) First, fifty-five thousand dollars to the department for administration of the fund;

(b) Second, payment to the intermediate care facilities for persons with developmental disabilities for the cost of the tax;

(c) Third, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for persons with developmental disabilities;

(d) Fourth, one million dollars to the General Fund; and

(e) Fifth, 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 tax provided for in section 68-1803 and not utilized under subdivisions (a), (b), (c), and (d) of this subsection shall be used to enhance rates in non-state-operated intermediate care facilities for persons with developmental disabilities by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature.

(5) The Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall report electronically, no later than December 1 of each year, to the Health and Human Services Committee of the Legislature and the Revenue Committee of the Legislature the amounts collected from each payer of the tax pursuant to section 68-1803 and the amount of each disbursement from the ICF/DD Reimbursement Protection Fund.

**Source:** Laws 2004, LB 841, § 5; Laws 2010, LB701, § 1; Laws 2013, LB23, § 19.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **68-1805 State medicaid plan; application for amendment; tax; when due.**

(1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ICF/DD Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for persons with developmental disabilities.

(2) The tax imposed under section 68-1803 is not due and payable until such amendment to the state medicaid plan is approved by the Centers for Medicare and Medicaid Services.

**Source:** Laws 2004, LB 841, § 6; Laws 2013, LB23, § 20.

### **68-1806 Collection of tax; discontinued; when; effect.**

(1) Until July 1, 2014:

(a) Collection of the tax imposed by section 68-1803 shall be discontinued if:

(i) The amendment to the state medicaid plan described in section 68-1805 is disapproved by the Centers for Medicare and Medicaid Services;

(ii) The department reduces rates paid to intermediate care facilities for persons with developmental disabilities to an amount less than the rates effective September 1, 2003; or

(iii) The department or any other state agency attempts to utilize the money in the ICF/DD Reimbursement Protection Fund for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax is discontinued as provided in subdivision (a) of this subsection, all money in the fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as the tax was assessed.

(2) Beginning on July 1, 2014:

(a) The department shall discontinue collection of the tax provided for in section 68-1803:

(i) If federal financial participation to match the payments by intermediate care facilities for persons with developmental disabilities pursuant to section 68-1803 becomes unavailable under federal law or the rules and regulations of the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or

(ii) If money in the ICF/DD Reimbursement Protection Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax provided for in section 68-1803 is discontinued as provided in subdivision (a) of this subsection, the money in the ICF/DD Reimbursement Protection Fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as collected.

**Source:** Laws 2004, LB 841, § 7; Laws 2013, LB23, § 21.

**68-1806.01 Tax; use.**

The department shall collect the tax provided for in section 68-1803 and remit the tax to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund. Beginning July 1, 2014, no proceeds from the tax provided for in section 68-1803, including the federal match, shall be placed in the General Fund unless otherwise provided in the ICF/DD Reimbursement Protection Act.

**Source:** Laws 2013, LB23, § 22.

**68-1807 Failure to pay tax; penalty.**

(1) An intermediate care facility for persons with developmental disabilities that fails to pay the tax required by section 68-1803 shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for persons with developmental disabilities for the year for which the tax is assessed.

(2) The department shall collect the penalties and remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2004, LB 841, § 8; Laws 2007, LB296, § 293; Laws 2013, LB23, § 23.

**68-1808 Refund; procedure.**

An intermediate care facility for persons with developmental disabilities that has paid a tax that is not required by section 68-1803 may file a claim for

refund with the department. The department may by rule and regulation establish procedures for filing and consideration of such claims.

**Source:** Laws 2004, LB 841, § 9; Laws 2013, LB23, § 24.

**68-1809 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out the ICF/DD Reimbursement Protection Act.

**Source:** Laws 2004, LB 841, § 10; Laws 2013, LB23, § 25.

**ARTICLE 19**

**NURSING FACILITY QUALITY ASSURANCE ASSESSMENT ACT**

Section

- 68-1901. Act, how cited.
- 68-1902. Definitions, where found.
- 68-1903. Bed-hold day, defined.
- 68-1904. Continuing care retirement community, defined.
- 68-1905. Department, defined.
- 68-1906. Gross inpatient revenue, defined.
- 68-1907. Hospital, defined.
- 68-1908. Life care contract, defined.
- 68-1909. Medical assistance program, defined.
- 68-1910. Medicare day, defined.
- 68-1911. Medicare upper payment limit, defined.
- 68-1912. Nursing facility, defined.
- 68-1913. Quality assurance assessment, defined.
- 68-1914. Resident day, defined.
- 68-1915. Skilled nursing facility, defined.
- 68-1916. Total resident days, defined.
- 68-1917. Quality assurance assessment; payment; computation.
- 68-1918. Providers exempt.
- 68-1919. Reduction of quality assurance assessment; when.
- 68-1920. Aggregate quality assurance assessment; limitation.
- 68-1921. Quality assurance assessment; payments; form.
- 68-1922. Department; collect quality assurance assessment; remit to State Treasurer.
- 68-1923. Quality assurance assessment; report; medicaid cost report; how treated.
- 68-1924. Underpayment or overpayment; notice.
- 68-1925. Failure to pay; penalty; waiver; when; withholding authorized; collection methods authorized.
- 68-1926. Nursing Facility Quality Assurance Fund; created; use; investment.
- 68-1927. Application for amendment to medicaid state plan; approval; effect; resubmission of waiver application.
- 68-1928. Department; discontinue collection of quality assurance assessments; when; return of money.
- 68-1929. Aggrieved party; hearing; petition.
- 68-1930. Rules and regulations.

**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.



**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.

**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.

**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 electronically 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; Laws 2013, LB222, § 24.

**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.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

## CHAPTER 69

### PERSONAL PROPERTY

#### Article.

2. Pawnbrokers and Junk Dealers. 69-206.
3. Eye Care.
  - (b) Consumer Protection in Eye Care Act. 69-308 to 69-314.
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. 69-2303 to 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.

## ARTICLE 3

## EYE CARE

## (b) CONSUMER PROTECTION IN EYE CARE ACT

## Section

- 69-308. Act, how cited.
- 69-309. Terms, defined.
- 69-310. Contact lenses or spectacles; prescription; contents; release to patient.
- 69-311. Operation of kiosk; conditions.
- 69-312. Over-the-counter spectacles.
- 69-313. Uniform Credentialing Act; applicability; department; powers; civil penalty; Attorney General; powers.
- 69-314. Rules and regulations.

## (b) CONSUMER PROTECTION IN EYE CARE ACT

**69-308 Act, how cited.**

Sections 69-308 to 69-314 shall be known and may be cited as the Consumer Protection in Eye Care Act.

**Source:** Laws 2016, LB235, § 1.

Effective date July 21, 2016.

**69-309 Terms, defined.**

For purposes of the Consumer Protection in Eye Care Act:

(1) Contact lens means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect. Contact lens includes, but is not limited to, any cosmetic, therapeutic, or corrective lens;

(2) Department means the Department of Health and Human Services;

(3) Dispense means the act of furnishing spectacles or contact lenses to a patient;

(4) Eye examination means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the establishment of a refractive error;

(5) Kiosk means automated equipment or application designed to be used on a telephone, a computer, or an Internet-based device that can be used either in person or remotely to conduct an eye examination;

(6) Over-the-counter spectacles means eyeglasses or lenses in a frame for the correction of vision that may be sold by any person, firm, or corporation at retail without a prescription;

(7) Prescription means a provider's handwritten or electronic order based on an eye examination that corrects refractive error;

(8) Provider means a physician, an osteopathic physician, or a physician assistant licensed under the Medicine and Surgery Practice Act or an optometrist licensed under the Optometry Practice Act;

(9) Spectacles means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as glasses or eyeglasses, including spectacles that may be adjusted by the wearer

to achieve different types or levels of visual correction or enhancement. Spectacles does not include an optical instrument or device that is not intended to correct or enhance vision or sold without consideration of the visual status of the individual who will use the optical instrument or device.

**Source:** Laws 2016, LB235, § 2.  
Effective date July 21, 2016.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

Optometry Practice Act, see section 38-2601.

**69-310 Contact lenses or spectacles; prescription; contents; release to patient.**

No person in this state may dispense contact lenses or spectacles, other than over-the-counter spectacles, to a patient without a valid prescription from a provider. A valid prescription for spectacles or contact lenses (1) shall contain an expiration date of not less than two years for spectacles or one year for contact lenses from the date of the eye examination by the provider or a statement by the provider of the reasons why a shorter time is appropriate based on the medical needs of the patient and (2) may not be made based solely on information about the human eye generated by a kiosk. The prescription shall take into consideration any medical findings and any refractive error discovered during the eye examination. A provider may not refuse to release a prescription for spectacles or contact lenses to a patient.

**Source:** Laws 2016, LB235, § 3.  
Effective date July 21, 2016.

**69-311 Operation of kiosk; conditions.**

No person shall operate a kiosk in Nebraska unless:

(1) The kiosk is registered or approved by the federal Food and Drug Administration for the intended use;

(2) The kiosk is designed and operated in a manner that provides any accommodation required by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., as such act existed on January 1, 2015;

(3) The kiosk and accompanying technology used for the collection and transmission of information and data, including photographs and scans, gathers and transmits protected health information in compliance with the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2015;

(4) The procedure for which the kiosk is used has a recognized Current Procedural Terminology code maintained by the American Medical Association;

(5)(a) If the kiosk has a physical location, the name and state license number of the provider who will read and interpret the diagnostic information and data shall be prominently displayed on the kiosk; or

(b) If the kiosk is an application, the name and state license number of the provider who will read and interpret the diagnostic information and data shall be displayed on the patient's prescription;

(6) Diagnostic information and data, including photographs and scans, gathered by the kiosk is read and interpreted by a provider if clinically appropriate; and

(7) The owner or lessee of the kiosk maintains liability insurance in an amount adequate to cover claims made by individuals diagnosed or treated based on information and data, including photographs and scans, generated by the kiosk.

**Source:** Laws 2016, LB235, § 4.  
Effective date July 21, 2016.

#### **69-312 Over-the-counter spectacles.**

The lenses in over-the-counter spectacles shall be of uniform focus power in each eye and shall not exceed +3.25 diopters.

**Source:** Laws 2016, LB235, § 5.  
Effective date July 21, 2016.

#### **69-313 Uniform Credentialing Act; applicability; department; powers; civil penalty; Attorney General; powers.**

(1) The Uniform Credentialing Act shall apply to any person alleged or believed to have violated the Consumer Protection in Eye Care Act. The department shall investigate potential violations of the Consumer Protection in Eye Care Act according to the procedures of the Uniform Credentialing Act and shall take appropriate action as provided by the Uniform Credentialing Act.

(2) In addition to the remedies, penalties, or relief available under the Uniform Credentialing Act, the department may impose a civil penalty against a person who does not hold a credential under the Uniform Credentialing Act who has violated or attempted to violate the Consumer Protection in Eye Care Act. The civil penalty shall not exceed ten thousand dollars for each violation, up to the maximum provided in section 38-198. If the department finds that a violation or attempted violation occurred and did not result in significant harm to human health, the department may issue a warning instead of imposing a civil penalty. Any civil penalty imposed pursuant to this section may be collected as provided in section 38-198.

(3) At the request of the department, the Attorney General may file a civil action seeking an injunction or other appropriate relief to enforce the Consumer Protection in Eye Care Act and the rules and regulations adopted and promulgated under the Consumer Protection in Eye Care Act.

**Source:** Laws 2016, LB235, § 6.  
Effective date July 21, 2016.

#### **Cross References**

Uniform Credentialing Act, see section 38-101.

#### **69-314 Rules and regulations.**

The department, in consultation with the Board of Optometry and the Board of Medicine and Surgery, may adopt and promulgate rules and regulations to carry out the Consumer Protection in Eye Care Act.

**Source:** Laws 2016, LB235, § 7.  
Effective date July 21, 2016.



**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.

**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.

**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.

#### **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.

#### **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.

#### **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.

### **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.

## ARTICLE 13

### DISPOSITION OF UNCLAIMED PROPERTY

#### (a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

##### Section

69-1301.	Terms, defined.
69-1307.06.	Military medal; report and delivery to State Treasurer.
69-1307.07.	Military medals; State Treasurer; duties.
69-1317.	Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment.
69-1329.	Act, how cited.

#### (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.

#### **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.

#### **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.

**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.

#### 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.

## 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. 1026.2(a)(16), as such regulation existed on January 1, 2016, and 15 U.S.C. 1602(h), as such section existed on January 1, 2016, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2, as such regulation existed on January 1, 2016. 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; Laws 2016, LB761, § 1.  
Effective date July 21, 2016.

**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, 2016, 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, 2016, 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; Laws 2016, LB761, § 2.  
Effective date July 21, 2016.

#### **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, 2016, 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; Laws 2016, LB761, § 3.  
Effective date July 21, 2016.

## ARTICLE 23

**DISPOSITION OF PERSONAL PROPERTY  
LANDLORD AND TENANT ACT**

## Section

- 69-2303. Personal property remaining on premises; landlord; duties; notice; contents; delivery.
- 69-2304. Notice; statement required.
- 69-2308. Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.

**69-2303 Personal property remaining on premises; landlord; duties; notice; contents; delivery.**

(1) Except as otherwise provided in subsection (5) of section 76-1414, when personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, the landlord shall give written notice as provided in subsection (2) of this section to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

(2)(a) The notice required by subsection (1) of this section shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(b) The notice shall state that reasonable costs of storage may be charged before the property is returned, the location where the property may be claimed, and the date on or before which such property must be claimed.

(c) The date specified in the notice shall be a date not less than seven days after the notice is personally delivered or, if mailed, not less than fourteen days after the notice is deposited in the mail.

(d) The notice shall be given within six months of the date of expiration of the lease of the property or the date of discovery of the abandonment, whichever is later.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last-known address and, if there is reason to believe that the notice sent to that address will not be received by him or her, also delivered or sent to such other address, if any, known to the landlord at which such person may reasonably be expected to receive the notice.

**Source:** Laws 1991, LB 36, § 3; Laws 1995, LB 175, § 1; Laws 2016, LB221, § 2.  
Effective date July 21, 2016.

**69-2304 Notice; statement required.**

A notice given pursuant to section 69-2303 shall contain one of the following statements, as appropriate:



(1) “If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act. You may claim the remaining money from the office of the State Treasurer as provided in such act.”; or

(2) “Because this property is believed to be worth less than two 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; Laws 2016, LB1075, § 1.

Effective date July 21, 2016.

**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 two 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; Laws 2016, LB1075, § 2.

Effective date July 21, 2016.

**Cross References**

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**ARTICLE 24**

**GUNS**

(a) HANDGUNS

Section

- 69-2402. Terms, defined.  
 69-2403. Sale, lease, rental, and transfer; certificate required; exceptions.  
 69-2409. Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election.  
 69-2409.01. Data base; created; disclosure; limitation; liability; prohibited act; violation; penalty; report; contents.  
 69-2423. Nebraska State Patrol; annual report; contents.

(c) CONCEALED HANDGUN PERMIT ACT

- 69-2427. Act, how cited.  
 69-2431. Fingerprinting; criminal history record information check.  
 69-2433. Applicant; requirements.  
 69-2435. Permitholder; continuing requirements; return of permit; when.  
 69-2436. Permit; period valid; fee; renewal; fee.  
 69-2439. Permit; application for revocation; prosecution; fine; costs.  
 69-2443. Violations; penalties; revocation of permit.  
 69-2449. Information to permitholder regarding lost or stolen handgun or firearm.

(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.

**69-2409.01 Data base; created; disclosure; limitation; liability; prohibited act; violation; penalty; report; contents.**

(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.

(5) The Nebraska State Patrol and the Department of Health and Human Services shall report electronically to the Clerk of the Legislature on a biannual basis the following information about the data base: (a) The number of total records of persons unable to purchase or possess firearms because of disqualification or disability shared with the National Instant Criminal Background Check System; (b) the number of shared records by category of such persons; (c) the change in number of total shared records and change in number of records by category from the previous six months; (d) the number of records existing but not able to be shared with the National Instant Criminal Background Check System because the record was incomplete and unable to be accepted by the National Instant Criminal Background Check System; and (e) the number of hours or days, if any, during which the data base was unable to share records with the National Instant Criminal Background Check System and the reason for such inability. The report shall also be published on the web sites of the Nebraska State Patrol and the Department of Health and Human Services.

**Source:** Laws 1996, LB 1055, § 1; Laws 1997, LB 307, § 112; Laws 2011, LB512, § 3; Laws 2014, LB699, § 6.

**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.

## (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. The spouse of such applicant shall also be considered a resident of this state for purposes of this section, as shall a person receiving the benefits of a spouse of a member of the United States Armed Forces under the law of the United States; 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; and

(10) 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; Laws 2016, LB190, § 1.  
Effective date July 21, 2016.

#### 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.

#### **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.

**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.

**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.

**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.
- 69-2703. Tobacco product manufacturer; requirements to sell within the state.
- 69-2705. Terms, defined.
- 69-2706. Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.
- 69-2707. Nonresident or foreign nonparticipating manufacturer; agent for service of process.
- 69-2707.01. Nonparticipating manufacturers; bond; amount; failure to make escrow deposits; execution upon bond.
- 69-2708. Stamping agent; duties; Tax Commissioner; Attorney General; powers.
- 69-2708.01. Stamping agent; responsible for escrow deposits; when; liability; calculation.
- 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.
- 69-2710. Removal from directory; procedure.
- 69-2710.01. Report; contents.
- 69-2710.02. License of stamping agent; termination; grounds; cure; notice; reinstatement; removal from directory; grounds; cure; notice; procedure.
- 69-2710.03. Rules and regulations.
- 69-2711. Conflict of laws; how treated.

**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.

(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; Laws 2015, LB261, § 4.

**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; contra-band; 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. 70-612 to 70-682.
10. Nebraska Power Review Board. 70-1001 to 70-1033.
16. Denial or Discontinuance of Utility Service. 70-1603, 70-1605.
18. Public Entities Mandated Project Charges Act. 70-1801 to 70-1819.
19. Rural Community-Based Energy Development Act. 70-1903 to 70-1909.

#### 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

- 70-612. Board of directors; election; subdivisions; procedure.  
70-615. Board of directors; vacancy; how filled.

## Section

- 70-619. Board of directors; qualifications; eligibility to serve.  
 70-623. Fiscal year; annual audit; filing.  
 70-651.04. Districts; gross revenue tax; distribution.  
 70-655. Reasonable rates required; negotiated rates authorized; conditions.  
 70-668. Streams; water rights; priority.  
 70-669. Streams; inferior rights; acquired by superior right; how compensated.  
 70-670. Eminent domain; procedure; duties of Attorney General; costs; certain property not subject to eminent domain.  
 70-682. Generating power agency; authority to engage in commodity futures financial hedging transactions; procedure; limitation.

**70-612 Board of directors; election; subdivisions; procedure.**

(1)(a) Subject to the provisions of Chapter 70, article 6, and subject to the approval of the Nebraska Power Review Board, the board of directors of a district, other than a district with a service area containing a city of the metropolitan class, may amend the petition for its creation to provide for the division of the territory of such district into two or more subdivisions for the nomination and election of some or all of the directors. Each subdivision shall be composed of one or more voting precincts, or divided voting precincts, and the total population of each such subdivision shall be approximately the same. Except in districts which contain a city of the metropolitan class, two or more subdivisions may be combined for election purposes, and members of the board of directors to be elected from such combined subdivisions may be nominated and elected at large when not less than seventy-five percent of the population of the combined subdivisions is within the corporate limits of any city.

(b) In the event a district formed includes all or part of two or more counties and is (i) engaged in furnishing electric light and power and more than fifty percent of its customers are rural customers or (ii) engaged in furnishing electric light and power and in the business of owning and operating irrigation works, then and in that event such subdivisions may be formed by following precinct or county boundary lines without regard to population if in the judgment of the Nebraska Power Review Board the interests of the rural users of electricity or of users of irrigation water service in such district will not be prejudiced thereby.

(2)(a) The board of directors of a district with a service area containing a city of the metropolitan class may amend its charter to provide for the division of the territory of the district into election subdivisions composed of substantially equal population and compact and contiguous territory and number the subdivisions consecutively and submit the maps to the Nebraska Power Review Board.

(b) If the board of directors provides for eight election subdivisions prior to January 1, 2014, the board of directors shall assign each position on the board of directors to represent a numbered election subdivision for the remainder of the term of office for which the member is elected, regardless of whether the member resides in the subdivision, and shall make such assignments so that the terms of members representing election subdivisions numbered one, two, and three expire in January 2015, the terms of members representing election subdivisions numbered four and five expire in January 2017, and the terms of members representing election subdivisions six, seven, and eight expire in January 2019. If possible, each member shall be assigned to represent an

election subdivision that corresponds to the end of the term he or she is serving.

(c) A successor who resides in the numbered election subdivision shall be nominated and elected at the statewide primary and general elections held in the calendar year prior to the expiration of the term of the member who represents such numbered election subdivision.

(3) After each federal decennial census, the board of directors of a district with a service area containing a city of the metropolitan class shall create new boundaries for the election subdivisions. In establishing the boundaries of the election subdivisions, the board of directors shall follow county lines wherever practicable, shall provide for the subdivisions to be composed of substantially equal population and compact and contiguous territory, and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census.

(4) Any public power district or public power and irrigation district owning and operating irrigation works may, with approval of the Nebraska Power Review Board, add representation on its board of directors from any county which is outside its chartered territory but in which is located some or all of such irrigation works.

**Source:** Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(3), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-612; Laws 1967, c. 418, § 3, p. 1287; Laws 1981, LB 181, § 14; Laws 1982, LB 198, § 3; Laws 1986, LB 949, § 12; Laws 1992, LB 424, § 18; Laws 1992, LB 573, § 9; Laws 2013, LB646, § 2.

#### **70-615 Board of directors; vacancy; how filled.**

(1) In addition to the events listed in section 32-560, a vacancy on the board of directors shall exist in the event of the (a) removal from the chartered area of any director, (b) removal from the subdivision from which such director was elected except as otherwise provided in subsection (2) or (3) of section 70-612, (c) elimination or detachment from the chartered area of the territory in which a director or directors reside, or (d) expiration of the term of office of a director and failure to elect a director to fill such office at the preceding general election. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board, unless such absences are excused by a majority of the remaining board members.

(2) In the event of a vacancy from any of such causes, or otherwise, such vacancy or vacancies shall, except in districts having within their chartered area twenty-five or more cities and villages, be filled by the board of directors. In districts having within their chartered area twenty-five or more cities and villages, vacancies shall be filled by the Governor.

(3) If a vacancy occurs during the term of any director prior to the deadline for filing and the unexpired term extends beyond the first Thursday after the first Tuesday in January following the next general election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election, and candidates may file nomination papers as provided by law for the placing of their names upon the ballot for election to the unexpired term. If a vacancy occurs during the term of any director after the

deadline for filing for election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election for which candidates may file nomination papers as provided by law.

(4) At any time a vacancy is to be filled by election, the secretary of the district shall give notice to the public by publishing the notice of vacancy, length of term, and the deadline for filing, once in a newspaper or newspapers of general circulation within the district.

(5) Any appointment shall be filed with the Secretary of State by certified mail.

**Source:** Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(7), p. 514; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-615; Laws 1945, c. 157, § 3, p. 518; Laws 1953, c. 106, § 31, p. 338; Laws 1957, c. 124, § 23, p. 436; Laws 1967, c. 418, § 5, p. 1268; Laws 1973, LB 364, § 3; Laws 1975, LB 453, § 59; Laws 1985, LB 569, § 2; Laws 1994, LB 76, § 584; Laws 2013, LB646, § 3.

#### **70-619 Board of directors; qualifications; eligibility to serve.**

(1) The corporate powers of the district shall be vested in and exercised by the board of directors of the district. No person shall be qualified to hold office as a member of the board of directors unless (a) he or she is a registered voter (i) of such chartered territory, (ii) of the subdivision from which a director is to be elected if such chartered territory is subdivided for election purposes as provided in subsection (1), (2), or (3) of section 70-612, or (iii) of one of the combined subdivisions from which directors are to be elected at large as provided in section 70-612 or (b) he or she is a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

(2)(a) No person who is a full-time or part-time employee of the district shall be eligible to serve as a member of the board of directors of that district and no high-level manager employed by a district may serve as a member of the board of directors of any district unless such person (i) resigns or (ii) assumes an unpaid leave of absence for the term as a member. The employing district shall grant such leave of absence when requested by any employee for the purpose of the employee serving as a member of such board. A member of a governing body of any one of the municipalities within the areas of the district may not serve on the original board of directors under sections 70-603 to 70-609.

(b) For purposes of this subsection, high-level manager means a person employed by a district who serves in a high-level managerial position, including chief executive officer, president, vice president, chief financial officer, chief operations officer, general manager, or assistant general manager.

**Source:** Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 518; R.S.1943, § 70-619; Laws 1944, Spec. Sess., c. 5, § 1(1), p. 106; Laws 1957, c. 127, § 2, p. 440; Laws 1963, c. 396, § 1, p. 1258; Laws 1967, c. 418, § 6, p. 1288; Laws 1973, LB 364, § 4; Laws 1982, LB 198, § 4; Laws 1983, LB 15, § 1; Laws 1985, LB 2, § 5; Laws 1986, LB 949, § 13; Laws 1991, LB 3, § 1; Laws 1994, LB 76, § 585; Laws 2013, LB646, § 4; Laws 2015, LB177, § 1.



## Cross References

Eligibility, additional requirements, see section 70-610.

**70-623 Fiscal year; annual audit; filing.**

The fiscal year of the district shall coincide with the calendar year, except that a district with only one wholesale customer that is a city or a village may use the same fiscal year as the city or village. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after the last day of the district's fiscal year.

**Source:** Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-623; Laws 1944, Spec. Sess., c. 5, § 1(6), p. 107; Laws 1967, c. 420, § 1, p. 1294; Laws 1981, LB 302, § 6; Laws 1993, LB 310, § 8; Laws 2004, LB 969, § 13; Laws 2014, LB798, § 1.

**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 for payments distributed prior to September 1, 2017, 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 section 79-1073.

**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; Laws 2016, LB1067, § 7.  
Effective date July 21, 2016.

**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.

#### 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.

### **70-668 Streams; water rights; priority.**

In applying the provisions of law relating to the appropriation of water, priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes, and those using the water for agricultural purposes shall have the preference over those using

the same for power purposes, where turbine or impulse water wheels are installed, or for instream-basin-management purposes.

**Source:** Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-668; Laws 2016, LB1038, § 13.  
Effective date July 21, 2016.

**70-669 Streams; inferior rights; acquired by superior right; how compensated.**

No inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user. The just compensation paid to those using water for power purposes shall not be greater than the cost of replacing the power which would be generated in the plant or plants of the power user by the water so acquired. The just compensation to be paid to a holder of an instream-basin-management appropriation that has been changed from a manufacturing of hydropower appropriation pursuant to section 46-290 shall be the cost per acre-foot of water subordinated for the hydropower appropriation at the time of approval of the change. The amount of compensation may be adjusted annually, except that any increase shall not exceed the annual change in the Consumer Price Index from the time of approval of the change. If publication of such index is discontinued, a comparable index selected by the Director of Natural Resources shall be used.

**Source:** Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-669; Laws 2016, LB1038, § 14.  
Effective date July 21, 2016.

**70-670 Eminent domain; procedure; duties of Attorney General; costs; certain property not subject to eminent domain.**

(1) In addition to any other rights and powers conferred upon any district organized under or subject to Chapter 70, article 6, each such district shall have and exercise the power of eminent domain to acquire from any person, firm, association, or private corporation any and all property owned, used, or operated, or useful for operation, in the generation, transmission, or distribution of electrical energy, including an existing electric utility system or any part thereof. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

(2) In the case of the acquisition through the exercise of the power of eminent domain of an existing electric utility system or part thereof, the Attorney General shall, upon request of any district, represent such district in the institution and prosecution of condemnation proceedings. After acquisition of an existing electric utility system through the exercise of the power of eminent domain, the district shall reimburse the state for all costs and expenses incurred in the condemnation proceedings by the Attorney General.

(3) A district may agree to limit its exercise of the power of eminent domain to acquire a project which is a renewable energy generation facility producing electricity with wind and any related facilities.

(4) No property owned, used, or operated as part of a privately developed renewable energy generation facility meeting the requirements of section

70-1014.02 shall be subject to eminent domain by any consumer-owned electric supplier operating in the State of Nebraska.

**Source:** Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-670; Laws 1945, c. 157, § 5, p. 519; Laws 1951, c. 101, § 107, p. 497; Laws 1981, LB 181, § 33; Laws 2009, LB561, § 1; Laws 2016, LB824, § 1. Effective date July 21, 2016.

**70-682 Generating power agency; authority to engage in commodity futures financial hedging transactions; procedure; limitation.**

(1) For purposes of this section:

(a) Generating power agency has the same meaning as in Chapter 70, article 6; and

(b) Regional transmission organization has the same meaning as in section 70-1001.01.

(2) Any generating power agency buying or selling fuel, power, or energy which operates in a regional transmission organization shall be authorized to engage in commodity futures financial hedging transactions with products regulated under the federal Commodity Futures Trading Commission for fuel, power, or energy as part of its sound business practices. Any generating power agency engaged in such transactions is authorized to grant a foreclosable security interest in and a lien on such agency’s commodity futures account contracts or funds used for such transactions in an amount not exceeding five percent of such agency’s annual gross revenue averaged over the preceding three calendar years.

(3) The authority to enter into agreements for the use of commodity futures financial hedging transactions shall be authorized by a resolution adopted or an agreement approved by the governing body of the generating power agency.

(4) The authority granted in this section is limited to granting a security interest in and a lien on future account contracts or funds specifically designated and used for such commodity futures financial hedging transactions. Except as otherwise authorized under Chapter 70, this section does not authorize granting a foreclosable security interest in or a lien on any other funds, assets, facilities, or property of a generating power agency.

(5) An agreement authorized by this section shall be considered a bond as defined in section 10-1103.

**Source:** Laws 2016, LB897, § 2.  
Effective date July 21, 2016.

**ARTICLE 10**

**NEBRASKA POWER REVIEW BOARD**

Section	
70-1001.	Declaration of policy.
70-1001.01.	Terms, defined.
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## Section

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**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 for sale at wholesale 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; Laws 2016, LB824, § 2.

Effective date July 21, 2016.

**70-1001.01 Terms, defined.**

For purposes of sections 70-1001 to 70-1028, unless the context otherwise requires:

(1) Board means the Nebraska Power Review Board;

(2) Electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail;

(3) Private electric supplier means an electric supplier producing electricity from a privately developed renewable energy generation facility that is not a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, any other governmental entity, or any combination thereof;

(4) Privately developed renewable energy generation facility means a facility that (a) generates electricity using solar, wind, geothermal, biomass, landfill gas, or biogas, including all electrically connected equipment used to produce, collect, and store the facility output up to and including the transformer that steps up the voltage to sixty thousand volts or greater, and including supporting structures, buildings, and roads, unless otherwise agreed to in a joint transmission development agreement, (b) is developed, constructed, and owned, in whole or in part, by one or more private electric suppliers, and (c) is not wholly owned by a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, any other governmental entity, or any combination thereof;

(5) 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;

(6) 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;

(7) State means the State of Nebraska; 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; Laws 2016, LB824, § 3.  
Effective date July 21, 2016.

**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.

(2) 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, except for the member designated to represent the board on the Southwest Power Pool Regional State Committee or its equivalent successor, who shall receive two hundred fifty dollars for each day actually and necessarily engaged in the performance of his or her duties, not to exceed twenty thousand dollars in any one year. If the member designated to represent the board on the Southwest Power Pool Regional State Committee should for any reason no longer serve in that capacity during a year, the pay received while serving in such capacity shall not be used for purposes of calculating the six-thousand-dollar limitation for board members not serving in that capacity. When another board member acts as the proxy for the designated Southwest Power Pool Regional State Committee member, he or she shall receive the same pay as the designated member would have for that activity. Pay received while serving as proxy for such designated member shall not be used for purposes of determining whether the six-thousand-dollar limitation has been met for board members not serving as such designated member. Total pay to board members for activities related to the Southwest Power Pool shall not exceed an aggregate total of twenty-five thousand dollars in any one year. Each member 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.

(3) The board 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.

(4) 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.

(5) 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.
- (6) 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.
- (7) 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.

(8) The board may establish working groups of interested parties to assist the board in carrying out the powers set forth in subsections (6) and (7) 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; Laws 2016, LB824, § 4.

Effective date July 21, 2016.

**70-1012 Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.**

(1) Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (a) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such consents are filed with the board, (b) for any generation facility when the board finds that (i) such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (ii) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (iii) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (c) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (d) for the construction of a qualified facility as defined in section 70-2002.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**Source:** Laws 1963, c. 397, § 12, p. 1264; Laws 1979, LB 119, § 1; Laws 1981, LB 181, § 49; Laws 1984, LB 729, § 1; Laws 2009, LB436, § 6; Laws 2016, LB824, § 5.

Effective date July 21, 2016.

**70-1012.01 Suppliers; electric generation and transmission facilities; terminate construction or acquisition; filing; reasons; hearing; effect; section, how construed.**

(1) If a supplier terminates construction or acquisition of electric generation or transmission facilities after receiving approval for the facilities from the board, the supplier shall file with the board, within thirty days after the action taken to terminate construction or acquisition, a statement of the factors or reasons relied upon by the supplier in taking such action. Within ten days after receipt of such a filing, the board shall give notice of the filing to such other

suppliers as it deems interested or affected by such action and it shall hold a hearing for the purpose of obtaining such additional information as the board deems advisable or necessary to inform other suppliers and the public of the reasons for such termination. Notice of any such hearing shall be given to those suppliers previously given notice of the filing and to any other parties expressing interest in the approved application.

(2) The board shall not have authority to approve or deny the action of a supplier terminating construction or acquisition, and any such filing or hearing shall be advisory and solely for the purpose of informing the board, other suppliers, interested parties, and the ratepayers of this state of the factors or reasons relied upon in taking action to terminate construction or acquisition.

(3) Nothing in this section shall constitute or be construed as a defense to any cause of action, including a claim for breach of contract, resulting from such termination.

(4) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**Source:** Laws 1979, LB 119, § 2; Laws 1981, LB 181, § 50; Laws 2016, LB824, § 6.

Effective date July 21, 2016.

**70-1013 Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.**

(1) 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 70-1014.01 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.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**Source:** Laws 1963, c. 397, § 13, p. 1265; Laws 1967, c. 425, § 1, p. 1301; Laws 2010, LB1048, § 4; Laws 2011, LB208, § 2; Laws 2013, LB340, § 1; Laws 2016, LB824, § 7.

Effective date July 21, 2016.

**70-1014 Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.**

(1) After hearing, the board shall have authority to approve or deny the application. Except as provided in section 70-1014.01 for special generation applications, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the

applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

(2) 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.

(3) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**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; Laws 2016, LB824, § 8.  
Effective date July 21, 2016.

**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.

(5) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**Source:** Laws 2003, LB 65, § 3; Laws 2009, LB561, § 2; Laws 2010, LB1048, § 7; Laws 2012, LB742, § 2; Laws 2016, LB824, § 9. Effective date July 21, 2016.

#### Cross References

Rural Community-Based Energy Development Act, see section 70-1901.

### **70-1014.02 Privately developed renewable energy generation facility; owner; duties; certification; decommissioning plan; bond; joint transmission development agreement; contents; property not subject to eminent domain.**

(1)(a) A privately developed renewable energy generation facility that meets the requirements of this section is exempt from sections 70-1012 to 70-1014.01 if no less than thirty days prior to the commencement of construction the owner of the facility:

(i) Notifies the board in writing of its intent to commence construction of a privately developed renewable energy generation facility;

(ii) Certifies to the board that the facility will meet the requirements for a privately developed renewable energy generation facility;

(iii) Certifies to the board that the private electric supplier will (A) comply with any decommissioning requirements adopted by the local governmental



entities having jurisdiction over the privately developed renewable energy generation facility and (B) except as otherwise provided in subdivision (b) of this subsection, submit a decommissioning plan to the board obligating the private electric supplier to bear all costs of decommissioning the privately developed renewable energy generation facility and requiring that the private electric supplier post a security bond or other instrument, no later than the tenth year following commercial operation, securing the costs of decommissioning the facility and provide a copy of the bond or instrument to the board;

(iv) Certifies to the board that the private electric supplier has entered into or prior to commencing construction will enter into a joint transmission development agreement pursuant to subdivision (c) of this subsection with the electric supplier owning the transmission facilities of sixty thousand volts or greater to which the privately developed renewable energy generation facility will interconnect; and

(v) Certifies to the board that the private electric supplier has consulted with the Game and Parks Commission to identify potential measures to avoid, minimize, and mitigate impacts to species identified under subsection (1) or (2) of section 37-806 during the project planning and design phases, if possible, but in no event later than the commencement of construction.

(b) The board may bring an action in the name of the State of Nebraska for failure to comply with subdivision (a)(iii)(B) of this subsection. Subdivision (a)(iii)(B) of this subsection does not apply if a local government entity with the authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction.

(c) The joint transmission development agreement shall address construction, ownership, operation, and maintenance of such additions or upgrades to the transmission facilities as required for the privately developed renewable energy generation facility. The joint transmission development agreement shall be negotiated and executed contemporaneously with the generator interconnection agreement or other directives of the applicable regional transmission organization with jurisdiction over the addition or upgrade of transmission, upon terms consistent with prudent electric utility practices for the interconnection of renewable generation facilities, the electric supplier's reasonable transmission interconnection requirements, and applicable transmission design and construction standards. The electric supplier shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement. The private electric supplier of the privately developed renewable energy generation facility shall have the right to construct any necessary facilities or improvements set forth in the joint transmission development agreement pursuant to the standards set forth in the agreement at the private electric supplier's cost.

(2) Within ten days after receipt of a written notice complying with subsection (1) of this section, the executive director of the board shall issue a written acknowledgment that the privately developed renewable energy generation facility is exempt from sections 70-1012 to 70-1014.01.

(3) The exemption allowed under this section for a privately developed renewable energy generation facility shall extend to and exempt all private electric suppliers owning any interest in the facility, including any successor private electric supplier which subsequently acquires any interest in the facility.

(4) No property owned, used, or operated as part of a privately developed renewable energy generation facility shall be subject to eminent domain by a consumer-owned electric supplier operating in the State of Nebraska. Nothing in this section shall be construed to grant the power of eminent domain to a private electric supplier or limit the rights of any entity to acquire any public, municipal, or utility right-of-way across property owned, used, or operated as part of a privately developed renewable energy generation facility as long as the right-of-way does not prevent the operation of or access to the privately developed renewable energy generation facility.

(5) Only a consumer-owned electric supplier operating in the State of Nebraska may exercise eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities. The exercise of eminent domain to provide needed transmission lines and related facilities for a privately developed renewable energy generation facility is a public use.

(6) Nothing in this section shall be construed to authorize a private electric supplier to sell or deliver electricity at retail in Nebraska.

(7) Nothing in this section shall be construed to limit the authority of or require a consumer-owned electric supplier operating in the State of Nebraska to enter into a joint agreement with a private electric supplier to develop, construct, and jointly own a privately developed renewable energy generation facility.

**Source:** Laws 2010, LB1048, § 6; Laws 2011, LB208, § 3; Laws 2016, LB824, § 10.

Effective date July 21, 2016.

**70-1015 Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized.**

If any supplier violates Chapter 70, article 10, by either (1) commencing the construction or finalizing or attempting to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities without first providing notice or obtaining board approval, whichever is required, or (2) serving or attempting to serve at retail any customers located in Nebraska or any wholesale customers in violation of section 70-1002.02, 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 Chapter 70, article 10.

**Source:** Laws 1963, c. 397, § 15, p. 1265; Laws 1967, c. 426, § 1, p. 1302; Laws 1981, LB 181, § 52; Laws 2011, LB208, § 4; Laws 2016, LB824, § 11.

Effective date July 21, 2016.

**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 assess-

ment 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.

### **70-1028 Electric transmission line approved for construction in regional transmission organization transmission plan; notice to board; failure to provide notice; effect.**

(1) If an electric transmission line has been approved for construction in a regional transmission organization transmission plan, the incumbent electric transmission owner of the existing electric transmission facilities to which the electric transmission line will connect shall give notice to the board, in writing, within ninety days after such approval, if it intends to construct, own, and maintain the electric transmission line. If no notice is provided, the incumbent electric transmission owner shall surrender its first right to construct, own, and maintain the electric transmission line and any other incumbent electric transmission owner may file an application for the electric transmission line under section 70-1012. Within twenty-four months after such notice, the incumbent electric transmission owner shall file an application with the board pursuant to section 70-1012.

(2) For purposes of this section:

(a) Electric transmission line means any line and related facilities connecting to existing electric transmission facilities for transmitting electric energy at a voltage of one hundred kilovolts or greater, other than a line solely for connecting an electric generation facility to facilities owned by an electric supplier; and

(b) Incumbent electric transmission owner means an entity that: (i) Is an electric supplier; (ii) is a member of a regional transmission organization; and (iii) owns and operates electric transmission lines at a voltage of one hundred kilovolts or greater.

**Source:** Laws 2013, LB388, § 1; Laws 2016, LB824, § 12.  
Effective date July 21, 2016.

**70-1029 Legislative intent.**

It is the intent of the Legislature to appropriate an additional \$200,000 for FY2014-15 to the Nebraska Power Review Board from the General Fund to provide funds to conduct or cause to be conducted a study of state, regional, and national transmission infrastructure and policy and future needs for transmission infrastructure and policy to serve Nebraska electric consumers and utilities and generation facilities in Nebraska seeking to export electricity outside of the state.

**Source:** Laws 2014, LB1115, § 1.

**70-1030 Policy of state.**

It is the policy of the state to encourage and allow opportunities for development and operation of renewable energy facilities intended primarily for export from the state in a manner that protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates and that results in economic development and employment opportunities for residents and communities of the state.

**Source:** Laws 2014, LB1115, § 2.

**70-1031 Purposes of study.**

The purposes of the study provided for under sections 70-1029 to 70-1033 shall include, but not be limited to, identification of electric transmission and generation constraints and opportunities, federal and state legal and regulatory requirements and practices, national and regional transmission operation, national and regional transmission plans and policies, national and regional markets for electricity export and opportunities for and barriers to exporting electricity to such markets, and economic development benefits of expanded state, regional, and national transmission connections.

**Source:** Laws 2014, LB1115, § 3.

**70-1032 Working group; members.**

The scope of the study provided for under sections 70-1029 to 70-1033 shall receive input from a working group that may include, but not be limited to, members of the Legislature, the State Energy Office, the Department of Economic Development, public power districts and other Nebraska electric providers, renewable energy development companies, municipalities, the Southwest Power Pool, the Western Area Power Administration, other transmission system owners, transmission operators, transmission developers, environmental interests, and other interested parties.

**Source:** Laws 2014, LB1115, § 4.

**70-1033 Nebraska Power Review Board; duties.**

(1) The Nebraska Power Review Board shall issue a request for proposals to conduct the study provided for under sections 70-1029 to 70-1033 after consultation with the working group as provided for in section 70-1032.

(2) Any contracts or agreements entered into under 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.

(3) The Nebraska Power Review Board shall present the results of the study to the Executive Board of the Legislative Council with a copy to the Clerk of the Legislature and the Governor on or before December 15, 2014. The report shall be submitted electronically.

**Source:** Laws 2014, LB1115, § 5.

**Cross References**

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

**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 to any subscriber whose service is proposed to be terminated. Such notice shall be given in person, by first-class mail, or by electronic delivery, except that electronic delivery shall only be used if the subscriber has specifically elected to receive such notices by electronic delivery. If notice is given by first-class mail or electronic delivery, such notice 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; Laws 2015, LB104, § 1.

ARTICLE 18

PUBLIC ENTITIES MANDATED PROJECT CHARGES ACT

Section

- 70-1801. Act, how cited.
- 70-1802. Definitions, where found.
- 70-1803. Financing costs, defined.
- 70-1805.01. Mandated project bond issuer, defined.
- 70-1806. Mandated project bonds, defined.
- 70-1812. Mandated project charges authorized; resolution of governing body; payment by customers; records required; judicial review authorized; procedure.
- 70-1813. Issuance of mandated project bonds; authorized; proceeds; use.
- 70-1818. Creation of mandated project bond issuer; procedure; board of directors.
- 70-1819. Mandated project bond issuer; bond issuance; procedure; use of proceeds; issuer powers; restriction on business activities; powers.

**70-1801 Act, how cited.**

Sections 70-1801 to 70-1819 shall be known and may be cited as the Public Entities Mandated Project Charges Act.

**Source:** Laws 2006, LB 548, § 1; Laws 2015, LB141, § 1.

**70-1802 Definitions, where found.**

For purposes of the Public Entities Mandated Project Charges Act, the definitions found in sections 70-1803 to 70-1811 apply.

**Source:** Laws 2006, LB 548, § 2; Laws 2015, LB141, § 2.

**70-1803 Financing costs, defined.**

Financing costs means:

- (1) Interest, including, but not limited to, capitalized interest, and redemption premiums that are payable on mandated project bonds;
- (2) The cost of retiring or refunding a public entity’s existing debt in connection with the issuance of mandated project bonds, but only to the extent the debt was issued for the purposes of financing mandated project costs;
- (3) Any cost related to the issuing and servicing of mandated project bonds, whether issued by a public entity or by a mandated project bond issuer, including, but not limited to, servicing fees, trustee fees, legal fees, administrative fees, bond counsel fees, bond placement or underwriting fees, remarketing fees, broker dealer fees, payments under an interest rate swap agreement, financial advisor fees, accounting or engineering report fees, and rating agency fees;
- (4) Any expense associated with any bond insurance policy, credit enhancement, or other financial arrangement entered into in connection with the issuance of mandated project bonds; and
- (5) The funding of one or more reserve accounts related to mandated project bonds.

**Source:** Laws 2006, LB 548, § 3; Laws 2015, LB141, § 3.

**70-1805.01 Mandated project bond issuer, defined.**



Mandated project bond issuer means an entity created pursuant to section 70-1818.

**Source:** Laws 2015, LB141, § 4.

**70-1806 Mandated project bonds, defined.**

Mandated project bonds means bonds, notes, or other evidences of indebtedness that are issued by a public entity or by a mandated project bond issuer, the proceeds of which are used directly or indirectly to pay or reimburse mandated project costs and financing costs and which bonds are secured by and payable from mandated project charges.

**Source:** Laws 2006, LB 548, § 6; Laws 2015, LB141, § 5.

**70-1812 Mandated project charges authorized; resolution of governing body; payment by customers; records required; judicial review authorized; procedure.**

(1) A public entity may elect to pay or reimburse mandated project costs and financing costs through the use of mandated project charges. Public entities are hereby authorized to impose and collect mandated project charges as provided in the Public Entities Mandated Project Charges Act. The election to use mandated project charges shall be made and evidenced by the adoption of a resolution of the governing body of the public entity authorizing the mandated project as set forth in the public entity's capital budget. The authorizing resolution shall include the following:

(a) A statement that the project is a mandated project and a description of the mandate that will be addressed by the mandated project;

(b) A statement that the public entity is electing to pay or reimburse the mandated project costs and financing costs with mandated project charges in accordance with the Public Entities Mandated Project Charges Act;

(c) An authorization to add a separate charge to each customer's electric service bill, representing such customer's portion of the mandated project charge;

(d) A description of the financial calculation, formula, or other method that the public entity utilizes to determine the mandated project charges that customers will be required to pay for the mandated project, including a periodic adjustment method, applied at least annually, that shall be utilized by the public entity to correct for any overcollection or undercollection of such mandated project charges or any other adjustment necessary to assure payment of debt service on mandated project bonds, including, but not limited to, the adjustment of the mandated project charges to pay related operating expenses and any debt service coverage requirement. The financial calculation, formula, or other method, including the periodic adjustment method, established in the authorizing resolution pursuant to this subdivision, and the allocation of mandated project charges to and among its customers, shall be decided solely by the governing body of the public entity and shall be final and conclusive, subject to the procedures set forth in subsection (4) of this section. In no event shall the periodic adjustment method established in the authorizing resolution pursuant to this subdivision be applied less frequently than required by the governing documents of any mandated project bonds issued to finance the mandated project. Once the financial calculation, formula, or other method for

determining the mandated project charges, and the periodic adjustment method, have been established in the authorizing resolution and have become final and conclusive as provided in the act, they shall not be changed;

(e) If mandated project bonds are to be issued for the mandated project by the public entity or by a mandated project bond issuer, a requirement that the public entity or mandated project bond issuer shall enter into a servicing agreement for the bonds with a trustee selected by the governing body of the public entity and the public entity or mandated project bond issuer shall act as a servicing agent for purposes of collecting the mandated project charges. Money collected by the public entity or mandated project bond issuer, acting as a servicing agent on behalf of a trustee, shall be held for the exclusive benefit of holders of mandated project bonds; and

(f) If mandated project bonds are to be issued for the mandated project by a mandated project bond issuer created by the public entity, a statement that the public entity elects to have bonds issued by the mandated project bond issuer and that the public entity shall pledge the proceeds of the mandated project charge for the purpose of securing such bonds.

(2) The determination of the governing body that a project is a mandated project shall be final and conclusive, and any mandated project bonds issued and mandated project charges imposed relating to such determination shall be valid and enforceable in accordance with their terms. Mandated project charges shall constitute a vested, presently existing property right. The public entity shall require, in its authorizing resolution with respect to mandated project charges, that so long as any customer obtains electric distribution service from the public entity, the customer shall pay the mandated project charge to the public entity regardless of whether or not the customer obtains electric energy service from the public entity or another energy supplier other than the public entity. All provisions of the authorizing resolution adopted pursuant to this section shall be binding on the public entity and on any successor or assignee of the public entity.

(3) The timely and complete payment of all mandated project charges shall be a condition of receiving electric service for customers of the public entity, and the public entity shall be authorized to use its established collection policies and all rights and remedies provided by the law to enforce payment and collection of the mandated project charges. In no event shall any customer of a public entity be entitled or authorized to withhold payment, in whole or in part, of any mandated project charges for any reason.

(4) The secretary or other duly designated officer of the governing body of the public entity shall prepare and maintain a complete record of all documents submitted to and all oral and written comments made to the governing body in connection with an authorizing resolution adopted pursuant to this section. Within ten days after adoption of an authorizing resolution, an aggrieved party may file a petition for judicial review in the Supreme Court and pay the docket fee established in section 33-103. The petition shall name the public entity as the respondent and shall be served upon the public entity in the manner provided by law for service of process. Within ten business days after service of the petition for judicial review upon the public entity, the secretary or other duly designated officer of the public entity shall prepare and file with the Clerk of the Supreme Court, at the public entity's expense, the record of all documents submitted to and all oral and written comments made to the governing

body in connection with the authorizing resolution. Judicial review pursuant to this subsection shall be based solely upon the record submitted by the public entity, and briefs to the court shall be limited to determining whether the financial calculation, formula, or other method adopted by the public entity pursuant to subdivision (1)(d) of this section is a fair, reasonable, and nondiscriminatory allocation to the public entity's customers of the mandated project charges needed to pay for the mandated project. Because the process of judicial review may delay the issuance of mandated project bonds to the financial detriment of customers of the public entity, the Supreme Court shall proceed to hear and determine a petition for judicial review under this section as expeditiously as practicable and shall give the matter precedence over other civil matters on the docket. The authorizing resolution shall become final and conclusive if there is no petition for judicial review filed within the time set forth in this subsection or upon the effective date of the court's decision in favor of the public entity. If the court rules against the public entity on a petition for judicial review under this subsection, the public entity's authorizing resolution shall be void and of no further force or effect.

For purposes of this subsection, aggrieved party means a retail customer of the public entity that receives electric service pursuant to a published rate schedule.

**Source:** Laws 2006, LB 548, § 12; Laws 2015, LB141, § 6.

**70-1813 Issuance of mandated project bonds; authorized; proceeds; use.**

(1) A public entity has the authority to issue mandated project bonds, including refunding bonds, in one or more series. A public entity also may create a mandated project bond issuer pursuant to section 70-1818 to issue mandated project bonds. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The public entity and any successor or assignee of the public entity shall be obligated to impose and collect the mandated project charges in amounts sufficient to pay debt service on the mandated project bonds as due. The pledge of mandated project charges shall be irrevocable, and the state, the public entity, or any successor or assignee of the public entity may not reduce, impair, or otherwise adjust mandated project charges, except that the public entity and any successor or assignee thereof shall implement the periodic adjustment method established by the authorizing resolution pursuant to subdivision (1)(d) of section 70-1812. Revenue from mandated project charges shall be deemed special revenue and shall not constitute revenue of the public entity for purposes of any pledge of revenue, receipts, or other income that such public entity has made or will make for the security of debt other than the mandated

project bonds to which the revenue from the mandated project charges is expressly pledged.

**Source:** Laws 2006, LB 548, § 13; Laws 2015, LB141, § 7.

**Cross References**

Nebraska Governmental Unit Security Interest Act, see section 10-1101.

**70-1818 Creation of mandated project bond issuer; procedure; board of directors.**

A public entity may create, by a duly adopted resolution of its governing body, a mandated project bond issuer. A mandated project bond issuer is a body politic and corporate, not an agency of the state but an independent instrumentality exercising essential public functions, and has the powers and duties set forth in section 70-1819. The chairperson of the governing body of the creating public entity shall appoint a three-person board of directors from among the governing body's members, and such board of directors shall govern the mandated project bond issuer.

**Source:** Laws 2015, LB141, § 8.

**70-1819 Mandated project bond issuer; bond issuance; procedure; use of proceeds; issuer powers; restriction on business activities; powers.**

(1) The mandated project bond issuer may issue mandated project bonds, including refunding bonds, in one or more series, as contemplated by a resolution of the public entity adopted in accordance with section 70-1812. The mandated project bond issuer shall comply with any resolution issued by the public entity in accordance with such section. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds issued by the mandated project bond issuer pursuant to this section. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The mandated project bond issuer may:

(a) Contract for servicing of mandated project bonds and for administrative services; and

(b) Accept the pledge of mandated project charges from the public entity pursuant to section 70-1812 and pledge the mandated project charges to secure the mandated project bonds and the payment of financing costs.

(3) So long as any mandated project bonds remain outstanding, the mandated project bond issuer may not merge or consolidate, directly or indirectly, with any person or entity. Additionally, the mandated project bond issuer shall not incur, guarantee, or otherwise become obligated to pay any debt or other obligations other than the mandated project bonds and financing costs unless otherwise permitted by the resolution of the public entity adopted pursuant to

section 70-1812. The mandated project bond issuer shall keep its assets and liabilities separate and distinct from those of any other entity.

(4) The mandated project bond issuer may not be a debtor under Chapter 9 of Title 11 of the United States Code or any other provision of such title. No governmental officer or organization may authorize, whether by executive order or otherwise, a mandated project bond issuer to be a debtor under Chapter 9 of Title 11 of the United States Code or any other provision of such title. Until at least one year and one day after all mandated project bonds issued by a restructuring bond issuer have ceased to be outstanding and all unpaid financing costs have been paid, the state shall not limit or alter the denial of authority to the mandated project bond issuer to be a debtor under Chapter 9 of Title 11 of the United States Code or any other provision of such title.

(5) The mandated project bond issuer may not engage in other business activities, except that in connection with the powers specified in this section, as a financing entity the mandated project bond issuer may:

(a) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(b) Adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with the Public Entities Mandated Project Charges Act to regulate its affairs, to carry into effect its powers and purposes, and to conduct its business;

(c) Sue and be sued in its own name;

(d) Have an official seal and alter it at will;

(e) Maintain an office at such place or places within the state as it may designate;

(f) Make and execute contracts and all other instruments as necessary or convenient for the performance of its duties and the exercise of its powers and functions under the act;

(g) Establish and maintain such accounts, reserves, and special funds, to be held in trust or otherwise as may be required by a resolution of the public entity pursuant to section 70-1812 or by agreements made in connection with the mandated project bonds or any agreement between itself and third parties;

(h) Employ officers and employees, prescribe their qualifications and duties, and fix their compensation, and may engage the services of and compensate attorneys, accountants, and such other advisors, consultants, and agents as may be necessary in its judgment to fulfill its duties under the act;

(i) Obtain insurance against any loss in connection with its business, property, and other assets in such amounts and from such insurers as it deems advisable;

(j) Invest funds in its custody pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act;

(k) Receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the Public Entities Mandated Project Charges Act, subject to the conditions upon which the grants or contributions are made, including gifts or grants from any department, agency, or instrumentality of the United States; and

(l) Sell and convey any real or personal property and make such order respecting the same as it deems conducive to the best interest of the mandated project bond issuer.

**Source:** Laws 2015, LB141, § 9.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Governmental Unit Security Interest Act, see section 10-1101.

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

**ARTICLE 19**

**RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT**

Section

70-1903. Terms, defined.

70-1904. C-BED project developer; electric supplier; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

70-1905. Electric supplier; duties.

70-1906. Construction of new renewable generation facilities; electric supplier; governing body; duties.

70-1907. C-BED project developer; provide notices.

70-1908. Sections; how construed.

70-1909. Electric supplier; limit on eminent domain.

**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 energy generation project using wind, solar, biomass, or landfill gas as the fuel source that:

(a) Has at least twenty-five percent of the gross power purchase agreement payments flowing to the qualified owner or owners or as payments to the local community; and

(b) Has a resolution of support or zoning approval adopted:

(i) By the county board of each county in which the C-BED project is to be located and which has adopted zoning regulations that require planning commission, county board, or county commission approval for the C-BED project; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) 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, unless the context requires a different meaning;

(3) Gross power purchase agreement payments means the total amount of payments during the first twenty years of the agreement;

(4) Payments to the local community include, but are not limited to:

(a) Lease and easement payments to property owners made as part of a C-BED project;

(b) Contract payments for concrete, steel, gravel, towers, turbines, blades, wire, or engineering, procurement, construction, geotechnical, environmental,



meteorological, or legal services or payments for other components, equipment, materials, or services that are necessary to permit or construct the C-BED project and that are provided by a company that has been organized or incorporated in Nebraska under Nebraska law and has employed at least five Nebraska residents for at least eighteen months prior to the date of the project application for certification as a C-BED project; and

(c) Payments that are for physical parts, materials, or components that are manufactured, assembled, or fabricated in Nebraska and that are not described in subdivision (a) or (b) of this subdivision.

Such payments need not be made directly from power purchase agreement revenue and may be made from other funds in advance of receiving power purchase agreement revenue; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under 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) A public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, or an electric membership association, except that qualified 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 either directly or indirectly by multiple electric suppliers;

(e) A tribal council;

(f) A domestic corporation organized in Nebraska under the Business Corporation Act or the Nebraska Model Business Corporation Act and domiciled in Nebraska; or

(g) A cooperative corporation organized under sections 21-1301 to 21-1306 and domiciled in Nebraska.

**Source:** Laws 2007, LB629, § 3; Laws 2008, LB916, § 1; Laws 2009, LB561, § 3; Laws 2010, LB888, § 102; Laws 2013, LB283, § 4; Laws 2014, LB402, § 1; Laws 2015, LB35, § 11; Laws 2015, LB412, § 1; Laws 2016, LB736, § 1; Laws 2016, LB824, § 13. Effective date July 21, 2016.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB736, section 1, with LB824, section 13, to reflect all amendments.

#### Cross References

**Business Corporation Act**, see section 21-2001.

**Nebraska Model Business Corporation Act**, see section 21-201.

**Nebraska Nonprofit Corporation Act**, see section 21-1901.

**Nebraska Uniform Limited Liability Company Act**, see section 21-101.

**70-1904 C-BED project developer; electric supplier; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.**

(1) A C-BED project developer and an electric supplier are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner.

(3) Except for an inherited interest, the transfer of the interest of a qualified owner in a C-BED project to any person other than another qualified owner or other qualified owners is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify any electric supplier that has a power purchase agreement with the C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

**Source:** Laws 2007, LB629, § 4; Laws 2008, LB916, § 2; Laws 2009, LB561, § 4; Laws 2014, LB402, § 2; Laws 2016, LB736, § 2.  
Effective date July 21, 2016.

#### **70-1905 Electric supplier; duties.**

An electric supplier shall:

(1) Consider mechanisms to encourage the aggregation of C-BED projects located in the same general geographical area; and

(2) Require any qualified owner to provide sufficient security to assure performance under the power purchase agreement.

**Source:** Laws 2007, LB629, § 5; Laws 2008, LB916, § 3; Laws 2016, LB736, § 3.  
Effective date July 21, 2016.

#### **70-1906 Construction of new renewable generation facilities; electric supplier; governing body; duties.**

The governing body of an electric supplier that has determined a need to construct new renewable generation facilities shall take reasonable steps to determine if one or more C-BED projects are available and are technically, economically, and operationally feasible to provide some or all of the identified generation need.

**Source:** Laws 2007, LB629, § 6; Laws 2016, LB736, § 4.  
Effective date July 21, 2016.

#### **70-1907 C-BED project developer; provide notices.**

To the extent feasible, a C-BED project developer shall provide, in writing, notice of incentives pursuant to the Rural Community-Based Energy Development Act for local ownership and local participation in a C-BED project to each property owner on whose property a turbine will be located and to the elected

governing body of each municipality or political subdivision in which a turbine will be located.

**Source:** Laws 2007, LB629, § 7; Laws 2008, LB916, § 4; Laws 2015, LB412, § 2.

**70-1908 Sections; how construed.**

Nothing in sections 70-1901 to 70-1907 shall be construed to obligate an electric supplier to enter into a power purchase agreement under a C-BED project.

**Source:** Laws 2007, LB629, § 8; Laws 2016, LB736, § 5.  
Effective date July 21, 2016.

**70-1909 Electric supplier; limit on eminent domain.**

An electric supplier as defined in section 70-1001.01 may agree to limit its exercise of the power of eminent domain to acquire a C-BED project and any related facilities if such electric supplier enters into a contract to purchase output from such C-BED project for a term of ten years or more.

**Source:** Laws 2007, LB629, § 9; Laws 2014, LB402, § 3.



## CHAPTER 71

### PUBLIC HEALTH AND WELFARE

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  - (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.
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- 53. Drinking Water.
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- 58. Health Care; Certificate of Need. 71-5803.09 to 71-5829.04.
- 59. Assisted-Living Facility Act. 71-5905.
- 60. Nursing Homes.
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  - (c) Training Requirements. 71-6039 to 71-6039.05.
- 62. Nebraska Regulation of Health Professions Act. 71-6201 to 71-6228.
- 64. Building Construction. 71-6403 to 71-6406.
- 65. In-home Personal Services. 71-6502.
- 67. Medication Regulation.
  - (b) Medication Aide Act. 71-6721 to 71-6736.
- 69. Abortion. 71-6901 to 71-6911.
- 74. Wholesale Drug Distributor Licensing. 71-7436 to 71-7460.02.
- 76. Health Care.
  - (b) Nebraska Health Care Funding Act. 71-7606, 71-7611.
- 79. Health Care Quality Improvement Act.
  - (a) Peer Review Committees. 71-7901 to 71-7903. Repealed.
  - (b) Health Care Quality Improvement Act. 71-7904 to 71-7913.
- 82. Statewide Trauma System Act. 71-8201 to 71-8248.
- 83. Credentialing of Health Care Facilities. 71-8313.
- 84. Medical Records. 71-8403.
- 85. Telehealth Services.
  - (a) Nebraska Telehealth Act. 71-8503 to 71-8508.
  - (b) Children's Behavioral Health. 71-8509 to 71-8512.
- 86. Blind and Visually Impaired. 71-8611 to 71-8613.
- 88. Stem Cell Research Act. 71-8804, 71-8805.
- 90. Sexual Assault or Domestic Violence Patient. 71-9001.
- 91. Concussion Awareness Act. 71-9101 to 71-9106.
- 92. Health Care Transparency Act. 71-9201 to 71-9204.
- 93. Home Care Consumer Bill of Rights Act. 71-9301 to 71-9306.
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Article.

95. Direct Primary Care Agreement Act. 71-9501 to 71-9511.

## ARTICLE 2

### PRACTICE OF BARBERING

Section

71-202.01. Terms, defined.

71-208. Barber school or college; requirements for approval; course of instruction; standards set by rules and regulations.

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.

71-219.03. Board of Barber Examiners; set fees; manner; annual report.

71-222.02. Board of Barber Examiners Fund; created; use; investment.

#### **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;

(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; and

(13) Postsecondary barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students who have successfully completed high school or its equivalent as determined by

successfully passing a general educational development test prior to admittance.

**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; Laws 2016, LB842, § 1.  
Effective date July 21, 2016.

**71-208 Barber school or college; requirements for approval; course of instruction; standards set by rules and regulations.**

The Legislature finds that, through licensing of barber schools, the Board of Barber Examiners approves barbering programs which lead to a certificate or diploma in Nebraska. No barber school or college shall be approved by the board unless (1)(a) a barber school or college that operates as a postsecondary barber school or college requires, as a prerequisite to admission, high school graduation or its equivalent as determined by successfully passing a general educational development test or (b) a barber school or college that does not operate as a postsecondary barber school or college requires, as a prerequisite to graduation from such school or college, high school graduation or its equivalent as determined by successfully passing a general educational development test, (2) as a prerequisite to graduation it requires a course of instruction of not less than two thousand one hundred hours, to be completed in a period of not less than one year, of not more than ten hours in any one working day, and (3) the barber school or college meets the standards of the Barber Act and any rules and regulations of the board. Such course of instruction shall include scientific fundamentals for barbering, hygiene, massaging, sterilization, haircutting, and shaving, except that when a barber school or college is a part of a high school accredited by the State Board of Education or the University of Nebraska, the Board of Barber Examiners shall provide in its rules and regulations that credit in the barber school or college shall be given for hours spent and courses pursued in the high school and that credit shall be given for courses in barbering taken in high school prior to formal enrollment in such barber school or college.

**Source:** Laws 1927, c. 163, § 6, p. 429; Laws 1929, c. 154, § 5, p. 536; C.S.1929, § 71-2008; R.S.1943, § 71-208; Laws 1945, c. 166, § 1(1), p. 532; Laws 1957, c. 294, § 3, p. 1054; Laws 1963, c. 409, § 10, p. 1319; Laws 1971, LB 1020, § 9; Laws 1978, LB 722, § 6; Laws 1997, LB 622, § 87; Laws 1999, LB 272, § 21; Laws 2016, LB842, § 2.  
Effective date July 21, 2016.

**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.

**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 Examiners 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.
- 71-413. Health care facility, defined.
- 71-415. Health care service, defined.
- 71-419.01. Hospital pharmacy, defined.
- 71-421. Intermediate care facility for persons with developmental disabilities, defined.
- 71-422.01. Memory care endorsement, defined.
- 71-428. Respite care service, defined.
- 71-434. License fees.
- 71-436. License; multiple services or locations; effect.
- 71-445. Discrimination or retaliation prohibited; action for relief authorized.
- 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; tetanus-diphtheria-pertussis vaccine; duties; record.
- 71-468. Onsite vaccinations for influenza and pneumococcal disease.
- 71-469. Onsite vaccinations for diphtheria, tetanus, and pertussis.
- 71-470. Hospital pharmacy; license, when required; designate pharmacist in charge; duties; inspection.
- 71-471. Memory care endorsement; application; qualifications.

## Section

- 71-472. Memory care endorsement; qualifications; rules and regulations; fee.  
 71-473. Department; duties.  
 71-474. Comprehensive stroke center, primary stroke center, or acute stroke-ready hospital; restriction on advertisement.

**71-401 Act, how cited.**

Sections 71-401 to 71-474 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; Laws 2013, LB459, § 1; Laws 2015, LB37, § 68; Laws 2016, LB698, § 17; Laws 2016, LB722, § 12.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB698, section 17, with LB722, section 12, to reflect all amendments.

**Note:** Changes made by LB722 became effective July 21, 2016. Changes made by LB698 became operative July 21, 2016.

**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; Laws 2015, LB37, § 69; Laws 2016, LB698, § 18.  
 Operative date July 21, 2016.

**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.

**71-413 Health care facility, defined.**

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

**Source:** Laws 2000, LB 819, § 13; Laws 2013, LB23, § 26.

**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.

**71-419.01 Hospital pharmacy, defined.**

Hospital pharmacy means each facility licensed as a hospital in which the compounding, preparation for administration, or dispensing of drugs or devices pursuant to a chart order occurs for patients within the confines of the hospital with oversight by a pharmacist in charge.

**Source:** Laws 2015, LB37, § 70.

**71-421 Intermediate care facility for persons with developmental disabilities, defined.**

Intermediate care facility for persons with developmental disabilities means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have a developmental disability.

**Source:** Laws 2000, LB 819, § 21; Laws 2013, LB23, § 27.

**71-422.01 Memory care endorsement, defined.**

Memory care endorsement means an endorsement for the license of an assisted-living facility providing care for persons with cognitive impairments or dementia which meets the requirements for the endorsement under section 71-472.

**Source:** Laws 2016, LB698, § 19.  
Operative date July 21, 2016.

**71-428 Respite care service, defined.**

(1) Respite care service means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

(2) Respite care service does not include:

(a) A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;

(b) A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act or which is licensed as a residential child-caring agency under the Children's Residential Facilities and Placing Licensure Act;

(c) An agency that recruits, screens, or trains a person to provide respite care;

(d) An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other

providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;

(e) A person who provides respite care to fewer than eight unrelated persons in any seven-day period in his or her home or in the home of the recipient of the respite care; or

(f) A nonprofit agency that provides group respite care for no more than eight hours in any seven-day period.

**Source:** Laws 2000, LB 819, § 28; Laws 2002, LB 1062, § 40; Laws 2004, LB 1005, § 43; Laws 2005, LB 2, § 1; Laws 2013, LB265, § 39.

#### Cross References

**Child Care Licensing Act**, see section 71-1908.

**Children's Residential Facilities and Placing Licensure Act**, see section 71-1924.

### 71-434 License fees.

(1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.

(2) License fees shall include a base fee of fifty dollars and an additional fee based on:

(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;

(b) The number of beds available to persons residing at the health care facility;

(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect the fee provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.



(6) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(7) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

**Source:** Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371; Laws 2013, LB23, § 28.

#### **71-436 License; multiple services or locations; effect.**

(1) Except as otherwise provided in section 71-470, an applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

(2) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure when requested by the entity.

**Source:** Laws 2000, LB 819, § 36; Laws 2002, LB 1062, § 43; Laws 2015, LB37, § 72.

#### **71-445 Discrimination or retaliation prohibited; action for relief authorized.**

(1) A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

(2) A health care facility licensed pursuant to the Health Care Facility Licensure Act shall not discriminate or retaliate against any person who has initiated or participated in the making of a report under the Uniform Credentialing Act to the department. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

**Source:** Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372; Laws 2016, LB750, § 10.

Effective date July 21, 2016.

#### **Cross References**

**Uniform Credentialing Act**, see section 38-101.

**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 or the Pharmacy Practice 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; Laws 2015, LB37, § 73.

**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.

**Pharmacy Practice Act**, see section 38-2801.

**71-465 Repealed. Laws 2012, LB 782, § 253.****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; tetanus-diphtheria-pertussis vaccine; 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, 2013:

- (a) Annually offer onsite influenza vaccinations to all hospital employees;
- (b) Offer to all hospital employees a single dose of tetanus-diphtheria-pertussis vaccine if they have not previously received such vaccine and regardless of the time since their most recent vaccination with such vaccine; and
- (c) Require all hospital employees to be vaccinated against influenza, tetanus, diphtheria, and pertussis, except that an employee may elect not to be vaccinated.

(2) The hospital shall keep a record of which hospital employees receive the annual vaccination against influenza and a single dose of tetanus-diphtheria-pertussis vaccine and which hospital employees do not receive such vaccinations.

(3) This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists.

**Source:** Laws 2011, LB542, § 2; Laws 2013, LB458, § 1; Laws 2014, LB859, § 1.

**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, 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. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine

exists. 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; Laws 2014, LB859, § 2.

**71-469 Onsite vaccinations for diphtheria, tetanus, and pertussis.**

In order to prevent, detect, and control diphtheria, tetanus, and pertussis in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall offer onsite vaccinations for diphtheria, tetanus, and pertussis 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, 2013. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists. Nothing in this section shall be construed to require any facility listed in this section to bear the cost of a vaccination provided pursuant to this section.

**Source:** Laws 2013, LB459, § 2; Laws 2014, LB859, § 3.

**71-470 Hospital pharmacy; license, when required; designate pharmacist in charge; duties; inspection.**

(1) A hospital in which drugs or devices are compounded, dispensed, or administered pursuant to chart orders is not required to obtain a separate license for the hospital pharmacy, except that if the compounding or dispensing of drugs or devices is done in the pharmacy at the hospital for persons not registered as patients within the confines of the hospital, the hospital shall obtain a pharmacy license. Compounding in a hospital pharmacy may occur for any hospital which is part of the same health care system under common ownership or which is a member of or an affiliated member of a formal network or partnership agreement.

(2) Beginning January 1, 2016, each hospital shall designate a pharmacist licensed in this state as being the pharmacist in charge and responsible for the practice of pharmacy and medication use procedure in such hospital, including section 38-2867.02. The Board of Pharmacy or its designated representatives may examine and inspect the practice of pharmacy in any hospital licensed by the department.

(3) The pharmacist in charge of a hospital pharmacy shall establish and implement policies and procedures for the practice of pharmacy and medication use in the hospital.

**Source:** Laws 2015, LB37, § 71.

**71-471 Memory care endorsement; application; qualifications.**

(1) An assisted-living facility may apply to the department for a memory care endorsement on a form prescribed by the department. Only an assisted-living facility which qualifies for the endorsement may advertise itself as an endorsed memory care facility and may qualify for reimbursement rates established pursuant to section 71-473.

(2) In order to qualify for the memory care endorsement, an assisted-living facility shall provide proof of meeting the qualifications established by the department pursuant to section 71-472.

**Source:** Laws 2016, LB698, § 20.  
Operative date July 21, 2016.

**71-472 Memory care endorsement; qualifications; rules and regulations; fee.**

(1) The department shall adopt and promulgate rules and regulations establishing qualifications for a memory care endorsement. The qualifications shall be specific to those necessary for residents with cognitive impairment or dementia and shall include, but not be limited to, staffing enhancements, staff training, dedicated memory care programming, cultural competencies, facility requirements, and security issues.

(2) The department shall award a memory care endorsement to an assisted-living facility licensed under the Health Care Facility Licensure Act upon application which provides proof of meeting the qualifications and payment of the required fee.

(3) The department shall set the fee at an amount to cover the costs of administering the endorsement.

**Source:** Laws 2016, LB698, § 21.  
Operative date July 21, 2016.

**71-473 Department; duties.**

The department shall examine the rates paid for care for persons with cognitive impairment or dementia, including state spending for such care and reimbursement rates paid for such care under the medical assistance program pursuant to the Medical Assistance Act. The department shall make findings regarding cost-savings for providing care for persons with cognitive impairments or dementia in assisted-living facilities with a memory care endorsement. The department shall make recommendations regarding a higher or supplemental reimbursement rate for assisted-living facilities which have a memory care endorsement and provide care for persons with cognitive impairments or dementia at a savings to the state or medical assistance program.

**Source:** Laws 2016, LB698, § 22.  
Operative date July 21, 2016.

**Cross References**

Medical Assistance Act, see section 68-901.

**71-474 Comprehensive stroke center, primary stroke center, or acute stroke-ready hospital; restriction on advertisement.**

A person may not advertise to the public, by way of any medium, that a hospital is a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital unless the hospital is listed as such by the Department of Health and Human Services under the Stroke System of Care Act.

**Source:** Laws 2016, LB722, § 13.  
Effective date July 21, 2016.

**Cross References**

Stroke System of Care Act, see section 71-4201.

**ARTICLE 5  
DISEASES**

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

Section

- 71-503.01. Reports required; confidentiality; limitations on use; immunity.
- 71-503.02. Chlamydia or gonorrhea; prescription oral antibiotic drugs; powers of medical professionals; restrictions.
- 71-503.03. Chlamydia or gonorrhea; prescription oral antibiotic drugs; rules and regulations.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

- 71-516.01. Act, how cited.
- 71-516.02. Legislative findings and declarations.
- 71-516.03. Terms, defined.
- 71-516.04. Facility; disclosures required; department; duties.
- 71-517. Memory care endorsement.

(e) IMMUNIZATION AND VACCINES

- 71-529. Statewide immunization action plan; department; powers.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

- 71-531. Test; written informed consent required; anonymous testing; exemptions.

(h) EXCHANGE OF IMMUNIZATION INFORMATION

- 71-539. Legislative intent.
- 71-540. Immunization information; nondisclosure.
- 71-541. Immunization information system; immunization information; access; fee.
- 71-541.01. Immunization information system; established; purpose; access to records authorized.
- 71-542. Immunization information system; immunization information; confidentiality; violation; penalty.
- 71-543. Rules and regulations.
- 71-544. Immunity.

(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.

(l) NEWBORN CRITICAL CONGENITAL HEART DISEASE SCREENING ACT

- 71-553. Act, how cited.
- 71-554. Legislative findings.
- 71-555. Terms, defined.
- 71-556. Newborn; critical congenital heart disease screening; responsibilities.
- 71-557. Department; duties; rules and regulations.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

**71-503.01 Reports required; confidentiality; limitations on use; immunity.**

(1) Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute allows medical practitioners or other persons to prescribe, provide, or dispense prescription drugs pursuant to sections 71-503.02 and 71-503.03 or requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive



laboratory findings to the Department of Health and Human Services or any county or city board of health, local public health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations and such prescription, provision, or dispensing of prescription drugs and records pertaining thereto shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska.

(2) In order to further the protection of public health, such reports, notifications, and prescription, provision, or dispensing of prescription drugs may be disclosed by the Department of Health and Human Services, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained except as required for delivery of such prescription drugs pursuant to sections 71-503.02 and 71-503.03. To further protect the public health, the Department of Health and Human Services, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

(3) The appropriate board, health department, agency, or official may: (a) Publish analyses of reports, information, and the notifications described in subsection (1) of this section for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (b) discuss the report or notification with the attending physician; and (c) make such investigation as deemed necessary.

(4) Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications or prescribing, providing, or dispensing such prescription drugs pursuant to sections 71-503.02 and 71-503.03 shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications or pursuant to prescription, provision, or dispensing of such prescription drugs.

**Source:** Laws 1967, c. 441, § 2, p. 1381; Laws 1986, LB 763, § 3; Laws 1988, LB 1012, § 8; Laws 1991, LB 703, § 25; Laws 1994, LB 819, § 3; Laws 1996, LB 1044, § 494; Laws 1997, LB 197, § 4; Laws 2005, LB 301, § 13; Laws 2007, LB296, § 382; Laws 2013, LB528, § 3.

**71-503.02 Chlamydia or gonorrhea; prescription oral antibiotic drugs; powers of medical professionals; restrictions.**

If a physician, a physician assistant, a nurse practitioner, or a certified nurse midwife licensed under the Uniform Credentialing Act diagnoses a patient as having chlamydia or gonorrhea, the physician may prescribe, provide, or

dispense pursuant to section 38-2850 and the physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide drug samples of prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. Adequate directions for use and medication guides, where applicable, shall be provided along with additional prescription oral antibiotic drugs for any additional partner. The physician, physician assistant, nurse practitioner, or certified nurse midwife shall at the same time provide written information about chlamydia and gonorrhea to the patient for the patient to provide to the partner or partners. The oral antibiotic drugs prescribed, provided, or dispensed pursuant to this section must be stored, dispensed, and labeled in accordance with federal and state pharmacy laws and regulations. Prescriptions for the patient's sexual partner or partners must include the partner's name. If the infected patient is unwilling or unable to deliver such prescription oral antibiotic drugs to his or her sexual partner or partners, such physician may prescribe, provide, or dispense pursuant to section 38-2850 and such physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide samples of the prescription oral antibiotic drugs for delivery to such partner, if such practitioner has sufficient locating information.

**Source:** Laws 2013, LB528, § 1.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-503.03 Chlamydia or gonorrhea; prescription oral antibiotic drugs; rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out section 71-503.02.

**Source:** Laws 2013, LB528, § 2.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

**71-516.01 Act, how cited.**

Sections 71-516.01 to 71-517 shall be known and may be cited as the Alzheimer's Special Care Disclosure Act.

**Source:** Laws 1994, LB 1210, § 162; Laws 2016, LB698, § 23.

Operative date July 21, 2016.

**71-516.02 Legislative findings and declarations.**

The Legislature finds and declares that:

(1) Certain nursing homes and related facilities and assisted-living facilities claim special care for persons who have Alzheimer's disease, dementia, or a related disorder;

(2) It is in the public interest to provide for the protection of consumers regarding the accuracy and authenticity of such claims;

(3) The provisions of the Alzheimer's Special Care Disclosure Act are intended to require such facilities to disclose the reasons for those claims, require records of such disclosures to be kept, and require the department to examine the records; and

(4) Alzheimer's special care units provide care for persons with cognitive impairments and dementia and assisted-living facilities would benefit from a memory care endorsement.

**Source:** Laws 1994, LB 1210, § 163; Laws 1996, LB 1044, § 499; Laws 1997, LB 608, § 6; Laws 2007, LB296, § 387; Laws 2016, LB698, § 24.

Operative date July 21, 2016.

#### **71-516.03 Terms, defined.**

For purposes of the Alzheimer's Special Care Disclosure Act:

(1) Alzheimer's special care unit means any nursing facility or assisted-living facility, licensed by the department, which secures, segregates, or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease, dementia, or a related disorder and which advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's disease, dementia, or related disorder care services;

(2) Department means the Department of Health and Human Services; and

(3) Memory care endorsement has the same meaning as in section 71-422.01.

**Source:** Laws 1994, LB 1210, § 164; Laws 1996, LB 1044, § 500; Laws 1997, LB 608, § 7; Laws 2007, LB296, § 388; Laws 2016, LB698, § 25.

Operative date July 21, 2016.

#### **71-516.04 Facility; disclosures required; department; duties.**

(1) 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 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.

(2) The information disclosed shall explain the additional care provided in each of the following areas:

(a) 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;

(b) The process and criteria for placement in, transfer to, or discharge from the unit;

(c) 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;

(d) 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;

- (e) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
- (f) The frequency and types of resident activities;
- (g) The involvement of families and the availability of family support programs; and
- (h) The costs of care and any additional fees.

(3) In order to qualify for a memory care endorsement, an assisted-living facility making a disclosure under this section shall comply with section 71-472.

**Source:** Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389; Laws 2010, LB849, § 23; Laws 2016, LB698, § 26.

Operative date July 21, 2016.

#### **71-517 Memory care endorsement.**

An assisted-living facility which is an Alzheimer's special care unit may apply for a memory care endorsement as provided in the Health Care Facility Licensure Act but shall not advertise itself as an endorsed memory care unit without such endorsement.

**Source:** Laws 2016, LB698, § 27.

Operative date July 21, 2016.

#### **Cross References**

Health Care Facility Licensure Act, see section 71-401.

### **(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.

#### (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.

#### (I) NEWBORN CRITICAL CONGENITAL HEART DISEASE SCREENING ACT

##### **71-553 Act, how cited.**

Sections 71-553 to 71-557 shall be known and may be cited as the Newborn Critical Congenital Heart Disease Screening Act.

**Source:** Laws 2013, LB225, § 1.

##### **71-554 Legislative findings.**

The Legislature finds that:

- (1) Critical congenital heart disease is among the most common birth defects;
- (2) Critical congenital heart disease is the leading cause of death for infants born with a birth defect;
- (3) A major cause of infant mortality as a result of critical congenital heart disease is that a significant number of newborns affected are not diagnosed in the newborn nursery as having critical congenital heart disease; and
- (4) An effective mechanism for critical congenital heart disease screening of newborns can reduce infant mortality.

**Source:** Laws 2013, LB225, § 2.

##### **71-555 Terms, defined.**

For purposes of the Newborn Critical Congenital Heart Disease Screening Act:

- (1) Birthing facility means a hospital or other health care facility in this state which provides birthing and newborn care services;
- (2) Critical congenital heart disease screening means a testing procedure or procedures intended to detect hypoplastic left heart syndrome, pulmonary

atresia, tetralogy of Fallot, total anomalous pulmonary venous return, transposition of the great arteries, tricuspid atresia, and truncus arteriosus;

(3) Department means the Department of Health and Human Services;

(4) Newborn means a child from birth through twenty-nine days old; and

(5) Parent means a natural parent, a stepparent, an adoptive parent, a legal guardian, or any other legal custodian of a child.

**Source:** Laws 2013, LB225, § 3.

**71-556 Newborn; critical congenital heart disease screening; responsibilities.**

(1) All newborns in this state shall undergo critical congenital heart disease screening in accordance with standards determined in rules and regulations adopted and promulgated by the department.

(2) For deliveries in a birthing facility, the birthing facility shall develop and implement policies to cause the screening of the newborn and the reporting of the results to the newborn's health care provider in accordance with standards adopted pursuant to subsection (1) of this section.

(3) For deliveries that are planned outside of a birthing facility, the prenatal care provider shall inform the parent of the importance of critical congenital heart disease screening and the requirement for all newborns to be screened. The parent shall be responsible for causing the screening to be performed within the period and in the manner prescribed by the department.

(4) For a birth that does not take place in a birthing facility, whether or not there is a prenatal care provider, and the newborn is not admitted to a birthing facility, the person registering such birth shall be responsible for obtaining critical congenital heart disease screening for the newborn within the period and in the manner prescribed by the department.

**Source:** Laws 2013, LB225, § 4.

**71-557 Department; duties; rules and regulations.**

The department shall:

(1) In consultation with a panel of persons having expertise in the field of critical congenital heart disease screening, develop approved methods of critical congenital heart disease screening;

(2) Apply for all available federal funding to carry out the Newborn Critical Congenital Heart Disease Screening Act; and

(3) Adopt and promulgate rules and regulations necessary to implement the act.

**Source:** Laws 2013, LB225, § 5.

**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.

71-612. Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.

71-615. Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court.

**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 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 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 electronically 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 an electronic 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 person listed in section 30-2223 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; Laws 2014, LB998, § 14; Laws 2016, LB786, § 1.  
Effective date July 21, 2016.

#### 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.

### **71-612 Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.**

(1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of sixteen dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of (a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or (b) the Military Department.

(3) The department may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the department it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the

amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any inhospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed three dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 14, p. 784; Laws 1921, c. 73, § 1, p. 272; C.S.1922, § 8244; Laws 1927, c. 166, § 9, p. 451; C.S.1929, § 71-2416; Laws 1941, c. 140, § 10, p. 554; C.S.Supp.,1941, § 71-2416; Laws 1943, c. 147, § 1, p. 532; R.S. 1943, § 71-612; Laws 1951, c. 229, § 1, p. 830; Laws 1959, c. 323, § 1, p. 1180; Laws 1963, c. 410, § 1, p. 1330; Laws 1965, c. 418, § 6, p. 1338; Laws 1965, c. 419, § 2, p. 1342; Laws 1973, LB 583, § 8; Laws 1983, LB 617, § 14; Laws 1985, LB 42, § 7; Laws 1986, LB 333, § 9; Laws 1989, LB 344, § 12; Laws 1991, LB 703, § 30; Laws 1992, LB 1019, § 50; Laws 1993, LB 536, § 63; Laws 1995, LB 406, § 32; Laws 1996, LB 1044, § 524; Laws 1997, LB 307, § 140; Laws 2002, Second Spec. Sess., LB 48, § 3; Laws 2004, LB 1005, § 56; Laws 2006, LB 994, § 86; Laws 2006, LB 1115, § 39; Laws 2007, LB296, § 413; Laws 2014, LB994, § 1.

**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.

**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.

**ARTICLE 8****BEHAVIORAL HEALTH SERVICES**

Section  
71-801. Nebraska Behavioral Health Services Act; act, how cited.  
71-802. Purposes of act.  
71-804. Terms, defined.  
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.

## Section

- 71-816. Repealed. Laws 2013, LB 6, § 16.  
71-817. Transferred to section 9-1006.  
71-821. Children and Family Behavioral Health Support Act; act, how cited.  
71-824. Post-adoption and post-guardianship case management services; notice; administration; evaluation.  
71-825. Repealed. Laws 2016, LB816, § 4.  
71-827. Repealed. Laws 2015, LB 8, § 4.  
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.

**71-802 Purposes of act.**

The purposes of the Nebraska Behavioral Health Services Act are to: (1) Reorganize statutes relating to the provision of publicly funded behavioral health services; (2) provide for the organization and administration of the public behavioral health system within the department; (3) rename mental health regions as behavioral health regions; (4) provide for the naming of regional behavioral health authorities and ongoing activities of regional governing boards; (5) reorganize and rename the State Mental Health Planning and Evaluation Council and the State Alcoholism and Drug Abuse Advisory Committee; (6) change and add provisions relating to development of community-based behavioral health services and funding for behavioral health services; and (7) authorize the closure of regional centers.

**Source:** Laws 2004, LB 1083, § 2; Laws 2006, LB 994, § 92; Laws 2013, LB6, § 12.

**71-804 Terms, defined.**

For purposes of the Nebraska Behavioral Health Services Act:

- (1) Behavioral health disorder means mental illness or alcoholism, drug abuse, or other addictive disorder;
- (2) Behavioral health region means a behavioral health region established in section 71-807;
- (3) Behavioral health services means services, including, but not limited to, consumer-provided services, support services, inpatient and outpatient services, and residential and nonresidential services, provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of persons with such disorders;
- (4) Community-based behavioral health services or community-based services means behavioral health services that are not provided at a regional center;
- (5) Department means the Department of Health and Human Services;
- (6) Director means the Director of Behavioral Health;
- (7) Division means the Division of Behavioral Health of the department;
- (8) Medical assistance program means the program established pursuant to the Medical Assistance Act;

(9) Public behavioral health system means the statewide array of behavioral health services for children and adults provided by the public sector or private sector and supported in whole or in part with funding received and administered by the department, including behavioral health services provided under the medical assistance program;

(10) Regional center means one of the state hospitals for the mentally ill designated in section 83-305; and

(11) Regional center behavioral health services or regional center services means behavioral health services provided at a regional center.

**Source:** Laws 2004, LB 1083, § 4; Laws 2006, LB 1248, § 74; Laws 2007, LB296, § 454; Laws 2013, LB6, § 13.

#### Cross References

Medical Assistance Act, see section 68-901.

### **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.

### **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) adminis-

tration 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.

**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.

**71-816 Repealed. Laws 2013, LB 6, § 16.**

**71-817 Transferred to section 9-1006.**

**71-821 Children and Family Behavioral Health Support Act; act, how cited.**

Sections 71-821 to 71-826 shall be known and may be cited as the Children and Family Behavioral Health Support Act.

**Source:** Laws 2009, LB603, § 5; Laws 2015, LB8, § 2.

**71-824 Post-adoption and post-guardianship case management services; notice; administration; evaluation.**

No later than January 1, 2010, the department shall provide post-adoption and post-guardianship case management services for adoptive and guardianship families of former state wards on a voluntary basis. The department shall notify adoptive parents and guardians of the availability of such services and the process to access such services and that such services are provided on a voluntary basis. Notification shall be in writing and shall be provided at the time of finalization of the adoption agreement or completion of the guardianship and each six months thereafter until dissolution of the adoption, until termination of the guardianship, until the former state ward attains nineteen years of age, or until extended guardianship assistance payments and medical care are terminated pursuant to section 43-4511, whichever is earlier. Post-adoption and post-guardianship case management services under this section shall be administered by the Division of Children and Family Services and shall be evaluated. The evaluation shall include, but not be limited to, the number and percentage of persons receiving such services and the degree of problem resolution reported by families receiving such services.

**Source:** Laws 2009, LB603, § 8; Laws 2014, LB908, § 9; Laws 2015, LB243, § 25.

**71-825 Repealed. Laws 2016, LB816, § 4.**

**71-827 Repealed. Laws 2015, LB 8, § 4.****71-830 Behavioral Health Education Center; created; administration; duties; report.**

(1) The Behavioral Health Education Center is created and shall be administered by the University of Nebraska Medical Center.

(2) The center shall:

(a)(i) 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. 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. A minimum of two of the eight center-funded residents shall be active in the rural training each year; and

(ii) Provide funds for five one-year doctoral-level psychology internships in Nebraska within twelve months after July 18, 2014, and every year thereafter and increase the number of interns in the program to ten within thirty-six months after July 18, 2014. The interns shall be placed in communities so as to increase access to behavioral health services for patients residing in rural and underserved areas of Nebraska;

(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, pharmacists, and physician assistants;

(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 curricula and training for behavioral health professionals delivering behavioral health services in community-based agencies, hospitals, and law enforcement. Development and dissemination of such curricula 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 of every odd-numbered year, 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; Laws 2014, LB901, § 1.

**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 21, 2016, shall:

(1) Provide a definition and cap on administrative spending such that (a) administrative expenditures do not include profit greater than the contracted amount, (b) any administrative spending is necessary to improve the health status of the population to be served, and (c) administrative expenditures do not include contractor incentives. Administrative spending shall not under any circumstances exceed twelve percent. Such spending shall be tracked by the contractor and reported to the department quarterly;

(2) Provide a definition of annual contractor profits and losses and restrict such profits and losses under the contract so that profit shall not exceed a percentage specified by the department but not more than 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 remittance if the contractor does not meet the minimum medical loss ratio, (b) performance contingencies imposed by the department, and (c) any unearned incentive funds, to fund additional health services for children, families, and adults according to a plan developed with input from stakeholders and approved by the department. Such plan shall address the 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 up to two percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract; and

(6) Be reviewed and awarded competitively and in full compliance with the procurement requirements of the State of Nebraska.

**Source:** Laws 2012, LB1158, § 2; Laws 2016, LB1011, § 1.  
Effective date July 21, 2016.

**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

- 71-1101. Act, how cited.
- 71-1104. Definitions, where found.
- 71-1107. Developmental disability, defined.
- 71-1108.01. Intellectual disability, defined.
- 71-1110. Transferred to section 71-1108.01.
- 71-1134. Reports.

#### **71-1101 Act, how cited.**

Sections 71-1101 to 71-1134 shall be known and may be cited as the Developmental Disabilities Court-Ordered Custody Act.

**Source:** Laws 2005, LB 206, § 1; Laws 2013, LB23, § 29.

#### **71-1104 Definitions, where found.**

For purposes of the Developmental Disabilities Court-Ordered Custody Act, the definitions in sections 71-1105 to 71-1116 apply.

**Source:** Laws 2005, LB 206, § 4; Laws 2013, LB23, § 30.

#### **71-1107 Developmental disability, defined.**

Developmental disability means an intellectual disability or a severe chronic cognitive impairment, other than mental illness, that is manifested before the age of twenty-two years and is likely to continue indefinitely.

**Source:** Laws 2005, LB 206, § 7; Laws 2013, LB23, § 31.

#### **71-1108.01 Intellectual disability, defined.**

Intellectual disability means a state of significantly subaverage general intellectual functioning which is associated with significant impairments in adaptive functioning manifested before the age of twenty-two years. Significant subaverage general intellectual functioning shall refer to a score of seventy or below on a properly administered and valid intelligence quotient test.

**Source:** Laws 2005, LB 206, § 10; R.S.1943, (2009), § 71-1110; Laws 2013, LB23, § 32; Laws 2016, LB1039, § 1.  
Effective date July 21, 2016.

**71-1110 Transferred to section 71-1108.01.****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.

**ARTICLE 13****FUNERAL DIRECTORS, EMBALMING, AND CREMATION****(b) CREMATION OF HUMAN REMAINS ACT**

## Section

71-1355. Act, how cited.

71-1356. Terms, defined.

71-1373. Cremation; right to authorize.

71-1382. Cremated remains; final disposition.

71-1382.01. Cremated remains; veteran or spouse or dependent of veteran; procedures; final disposition; records; immunity.

**(b) CREMATION OF HUMAN REMAINS ACT****71-1355 Act, how cited.**

Sections 71-1355 to 71-1385 shall be known and may be cited as the Cremation of Human Remains Act.

**Source:** Laws 2003, LB 95, § 1; Laws 2015, LB146, § 1.

**Cross References**

**Funeral Directing and Embalming Practice Act**, see section 38-1401.

**71-1356 Terms, defined.**

For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

(1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;

(2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 30-2223 or a person authorized on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, as provided in section 38-1425;

(3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;

(4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable

residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;

(5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;

(6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;

(7) Cremation chamber means the enclosed space within which a cremation takes place;

(8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;

(9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(10) Crematory operator means a person who is responsible for the operation of a crematory;

(11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;

(12) Department means the Division of Public Health of the Department of Health and Human Services;

(13) Director means the Director of Public Health of the Division of Public Health;

(14) Funeral director has the same meaning as in section 71-507;

(15) Funeral establishment has the same meaning as in section 38-1411;

(16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;

(17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains;

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container;

(20) Veteran means a person who served on active duty as a member of the United States Armed Forces, a member of the Nebraska National Guard, or a member of the United States Reserve Forces, who was discharged or released from such service under conditions other than dishonorable, and who is eligible for burial in a veteran cemetery;

(21) Veteran cemetery means a cemetery under the control of the United States Department of Veterans Affairs National Cemetery Administration or the Nebraska Department of Veterans' Affairs; and

(22) Veterans service organization means an association, corporation, or other entity that is:

(a) A charitable organization that is tax exempt under section 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code of 1986; and

(b) Organized for the benefit of veterans burial and interment and recognized by the Memorial Affairs Division of the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs. The term includes a member or employee of an eligible nonprofit veterans association, corporation, or entity that specifically assists in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

**Source:** Laws 2003, LB 95, § 2; Laws 2007, LB296, § 469; Laws 2007, LB463, § 1186; Laws 2014, LB998, § 15; Laws 2015, LB146, § 2.

#### **71-1373 Cremation; right to authorize.**

The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 30-2223.

**Source:** Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190; Laws 2014, LB998, § 16.

#### **71-1382 Cremated remains; final disposition.**

(1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after August 31, 2003.

(2)(a) Cremated remains shall be delivered or released by the crematory authority or funeral establishment to the representative specified by the authorizing agent on the cremation authorization form.

(b) If the crematory authority or funeral establishment has documentation that the cremated remains are those of a veteran or the spouse or dependent of a veteran who did not desire any funeral or burial-related services or ceremonies recognizing his or her service as a veteran and the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition or claimed the remains after such sixty-day period, the crematory authority or funeral establishment may dispose of the remains.

(c) If the crematory authority or funeral establishment (i) has no information whether the cremated remains are those of a veteran or the spouse or dependent of a veteran or (ii) has information that the cremated remains are those of a veteran or the spouse or dependent of a veteran but no information on whether such veteran desired a service recognizing his or her service as a

veteran, the crematory authority or funeral establishment may use the process provided in section 71-1382.01 to relinquish control of such cremated remains.

(d) The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

**Source:** Laws 2003, LB 95, § 28; Laws 2015, LB146, § 3.

**71-1382.01 Cremated remains; veteran or spouse or dependent of veteran; procedures; final disposition; records; immunity.**

(1)(a) If the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of cremated remains or claimed cremated remains for final disposition as provided in section 71-1382, the crematory authority or funeral establishment may provide information regarding the unclaimed remains to the United States Department of Veterans Affairs, the Nebraska Department of Veterans' Affairs, or a veterans service organization and request that the department or the veterans service organization working with the department:

(i) Determine if, based on the information received, the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran; and

(ii) Verify if the decedent is eligible for burial in a veteran cemetery.

(b) The information provided to the department may include a copy of the person's death certificate, the person's name, date of birth, place of birth, date of death, marriage certificate, social security number, military service number, branch of service, or military rank on date of death, or the Department of Defense Form 214, also known as the DD Form 214.

(c) The information submitted by the crematory authority or funeral establishment to the Nebraska Department of Veterans' Affairs shall not be considered a public record for purposes of sections 84-712 to 84-712.09.

(2) If the crematory authority or funeral establishment receives notification of a determination by the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs that the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran and such person is eligible for burial in a veteran cemetery, then the crematory authority or funeral establishment may relinquish control of such remains to a veterans service organization or a designated member or employee of such organization.

(3)(a) The veterans service organization shall provide disposition of the remains of such veteran or the spouse or dependent of a veteran with a funeral at a veteran cemetery after:

(i) The veterans service organization has made reasonable efforts to locate the authorizing agent to notify him or her of the veterans service organization's intent to claim the cremated remains for the purpose of providing disposition in accordance with this section;

(ii) The cremated remains of such veteran or the spouse or dependent of a veteran have been in the possession of the veterans service organization for a period of at least one year; and

(iii) No attempt has been made to claim the unclaimed cremated remains by the authorizing agent within such one-year period.

(b) The veterans service organization may provide disposition of cremated remains by placement in a tomb, mausoleum, crypt, or columbarium in a veteran cemetery or by burial in a veteran cemetery but shall not scatter the cremated remains.

(4) If the crematory authority or funeral establishment relinquishes control of the unclaimed cremated remains to a veterans service organization, it shall:

(a) Establish and maintain a record identifying the veterans service organization receiving the remains; and

(b) Retain such record for five years from the date of transfer of the remains to the veterans service organization.

(5) A crematory operator, funeral director, crematory authority, funeral establishment, or veterans service organization shall not be liable for the disposition of cremated remains in accordance with this section unless there is negligence or misconduct.

**Source:** Laws 2015, LB146, § 4.

**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.

71-1567. Seal; denied or suspended; hearing; appeal.

(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.

**71-1567 Seal; denied or suspended; hearing; appeal.**

(1) The commission shall refuse to issue a seal to a manufacturer for any modular housing unit not found to be in compliance with its standards governing the construction of or the structural, plumbing, heating, or electrical systems for modular housing units or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal may be appealed, and the appeal shall be in accordance with section 75-136.

(2) The issuance of seals may be suspended as to any manufacturer who is convicted of violating section 71-1563 or as to any manufacturer who violates any other provision of the Nebraska Uniform Standards for Modular Housing Units Act or any rule, regulation, commission order, or standard adopted pursuant thereto, and issuance of the seals shall not be resumed until such manufacturer submits sufficient proof that the conditions which caused the violation have been remedied. Any such manufacturer may request a hearing before the commission on the issue of such suspension. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension may be appealed, and the appeal shall be in accordance with section 75-136.

**Source:** Laws 1976, LB 248, § 13; Laws 1984, LB 822, § 13; Laws 1988, LB 352, § 121; Laws 1998, LB 1073, § 101; Laws 2008, LB797, § 11; Laws 2013, LB545, § 2.

## Cross References

Administrative Procedure Act, see section 84-920.

**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. Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.
- 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.

**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.

**71-1631 Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.**

Except as provided in subsection (4) of section 71-1630, the board of health of each county, district, or city-county health department organized under sections 71-1626 to 71-1636 shall, immediately after appointment, meet and organize by the election of one of its own members as president, one as vice president, and another as secretary and, either from its own members or otherwise, a treasurer and shall have the power set forth in this section. The board may elect such other officers as it may deem necessary and may adopt and promulgate such rules and regulations for its own guidance and for the government of such health department as may be necessary, not inconsistent with sections 71-1626 to 71-1636. The board of health shall, with the approval of the county board and the municipality, whenever a city is a party in such a city-county health department:

(1) Select the health director of such department who shall be (a) well-trained in public health work though he or she need not be a graduate of an accredited medical school, but if he or she is not such a graduate, he or she shall be assisted at least part time by at least one medical consultant who shall be a licensed physician, (b) qualified in accordance with the state personnel system, and (c) approved by the Department of Health and Human Services;

(2) Hold an annual meeting each year, at which meeting officers shall be elected for the ensuing year;

(3) Hold meetings quarterly each year;

(4) Hold special meetings upon a written request signed by two of its members and filed with the secretary;

(5) Provide suitable offices, facilities, and equipment for the health director and assistants and their pay and traveling expenses in the performance of their duties, with mileage to be computed at the rate provided in section 81-1176;

(6) Publish, on or soon after the second Tuesday in July of each year, in pamphlet form for free distribution, an annual report showing (a) the condition of its trust for each year, (b) the sums of money received from all sources, giving the name of any donor, (c) how all money has been expended and for

what purpose, and (d) such other statistics and information with regard to the work of such health department as may be of general interest;

(7) Enact rules and regulations, subsequent to public hearing held after due public notice of such hearing by publication at least once in a newspaper having general circulation in the county or district at least ten days prior to such hearing, and enforce the same for the protection of public health and the prevention of communicable diseases within its jurisdiction, subject to the review and approval of such rules and regulations by the Department of Health and Human Services;

(8) Make all necessary sanitary and health investigations and inspections;

(9) In counties having a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census, enact rules and regulations for the protection of public health and the prevention of communicable diseases within the district, except that such rules and regulations shall have no application within the jurisdictional limits of any city of the metropolitan class and shall not be in effect until (a) thirty days after the completion of a three-week publication in a legal newspaper, (b) approved by the county attorney with his or her written approval attached thereto, and (c) filed in the office of the county clerk of such county. A county shall comply with this subsection within six months after a determination that the population has reached more than four hundred thousand inhabitants as determined by the most recent federal decennial census;

(10) Investigate the existence of any contagious or infectious disease and adopt measures, with the approval of the Department of Health and Human Services, to arrest the progress of the same;

(11) Distribute free as the local needs may require all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or purchased for public health purposes by the county board;

(12) Upon request, give professional advice and information to all city, village, and school authorities on all matters pertaining to sanitation and public health;

(13) Fix the salaries of all employees, including the health director. Such city-county health department may also establish an independent pension plan, retirement plan, or health insurance plan or, by agreement with any participating city or county, provide for the coverage of officers and employees of such city-county health department under such city or county pension plan, retirement plan, or health insurance plan. Officers and employees of a county health department shall be eligible to participate in the county pension plan, retirement plan, or health insurance plan of such county. Officers and employees of a district health department formed by two or more counties shall be eligible to participate in the county retirement plan unless the district health department establishes an independent pension plan or retirement plan for its officers or employees;

(14) Establish fees for the costs of all services, including those services for which third-party payment is available; and

(15) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, implement and enforce an air pollution control program under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal

Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

**Source:** Laws 1943, c. 152, § 6, p. 558; R.S.1943, § 71-1631; Laws 1953, c. 249, § 1, p. 852; Laws 1955, c. 275, § 1, p. 871; Laws 1963, c. 401, § 1, p. 1286; Laws 1967, c. 449, § 3, p. 1394; Laws 1969, c. 151, § 5, p. 713; Laws 1972, LB 1497, § 6; Laws 1973, LB 285, § 1; Laws 1979, LB 198, § 2; Laws 1981, LB 204, § 120; Laws 1992, LB 860, § 3; Laws 1992, LB 1257, § 74; Laws 1993, LB 623, § 2; Laws 1996, LB 1011, § 28; Laws 1996, LB 1044, § 571; Laws 1997, LB 185, § 4; Laws 2006, LB 1019, § 6; Laws 2007, LB296, § 481; Laws 2016, LB742, § 21.  
Effective date July 21, 2016.

### **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) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, a board of health with an independent retirement plan established pursuant to section 71-1631 shall cause to be prepared an annual report and the health director shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature 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. If the board of health does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the local public health department. All costs of the audit shall be paid by the local public health department. 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. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

**Source:** Laws 1998, LB 1191, § 43; Laws 1999, LB 795, § 12; Laws 2011, LB474, § 12; Laws 2014, LB759, § 19.

## ARTICLE 17

### NURSES

#### (h) NEBRASKA CENTER FOR NURSING ACT

Section

71-1796. Act, how cited.

71-17,100. Repealed. Laws 2010, LB 849, § 41.

#### (j) NURSING FACULTY STUDENT LOAN ACT

71-17,115. Report required.

#### (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.



## CARE OF CHILDREN

### ARTICLE 19

#### CARE OF CHILDREN

##### (a) FOSTER CARE LICENSURE

###### Section

- 71-1901. Terms, defined.
- 71-1902. Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.
- 71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.
- 71-1904. Rules and regulations; waiver of licensing standard; when; department; report.
- 71-1907. Child passenger restraint; requirements; violation; penalty.

##### (b) CHILD CARE LICENSURE

- 71-1908. Act, how cited; legislative findings.
- 71-1911. Licenses; when required; issuance; corrective action status; display of license.
- 71-1911.03. Applicant; liability insurance.
- 71-1912. Department; investigation; inspections.
- 71-1919. License denial; disciplinary action; grounds.

##### (c) CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

- 71-1924. Act, how cited.
- 71-1925. Purpose of act.
- 71-1926. Terms, defined.
- 71-1927. Residential child-caring agency or child-placing agency; license required; current license holders; how treated.
- 71-1928. Applicant for license or renewal; application; requirements; contents.
- 71-1929. Fees.
- 71-1930. Licenses; expiration date; not transferable or assignable; public inspection and display.
- 71-1931. Separate license required; duties of licensee.
- 71-1932. Provisional license; period valid; conversion to regular license.
- 71-1933. Inspection by department; inspection report.
- 71-1934. State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority.
- 71-1935. Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings.
- 71-1936. Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity.
- 71-1937. Licensee; discrimination or retaliation prohibited; cause of action for relief.
- 71-1938. Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures.
- 71-1939. Department; deny or refuse renewal of license; grounds.
- 71-1940. Deny, refuse renewal, or take disciplinary action against license; grounds.
- 71-1941. License; department; impose disciplinary actions; fine; how treated; recovery.
- 71-1942. Disciplinary action; department; considerations.
- 71-1943. Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing.
- 71-1944. Applicant or licensee; notification to department; failure to notify department; effect.
- 71-1945. Applicant or licensee; hearing; procedure; director; decision; contents.
- 71-1946. Decision of department; appeal; procedure.
- 71-1947. Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period.

§ 71-1901

**PUBLIC HEALTH AND WELFARE**

Section

- 71-1948. Voluntary surrender of license.  
71-1949. Rules and regulations; contested cases; procedure.  
71-1950. Violations; penalty.  
71-1951. Existing rules and regulations, licenses, and proceedings; how treated.  
(d) STEP UP TO QUALITY CHILD CARE ACT  
71-1952. Act, how cited.  
71-1953. Purposes of act.  
71-1954. Terms, defined.  
71-1955. Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.  
71-1956. Child care and early childhood education program; rating; quality rating criteria.  
71-1957. Participation in quality rating and improvement system.  
71-1958. Quality scale rating; application; assignment of rating.  
71-1959. Quality scale rating review; reevaluation.  
71-1960. License under Child Care Licensing Act; denial of license or disciplinary act authorized.  
71-1961. Quality rating and improvement system incentives and support.  
71-1962. Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties; develop classification system for employees; use.  
71-1963. Quality scale ratings available on web site; when.  
71-1964. Rules and regulations.

(a) FOSTER CARE LICENSURE

**71-1901 Terms, defined.**

For purposes of sections 71-1901 to 71-1906.01:

(1) Person includes a partnership, limited liability company, firm, agency, association, or corporation;

(2) Child means an unemancipated minor;

(3) Child-placing agency has the definition found in section 71-1926;

(4) Department means the Department of Health and Human Services;

(5) Foster care means engaged in the service of exercising twenty-four-hour daily care, supervision, custody, or control over children, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home. Foster care does not include casual care at irregular intervals or programs as defined in section 71-1910;

(6) Foster family home means a home which provides foster care to a child or children pursuant to a foster care placement as defined in section 43-1301. Foster family homes include licensed homes where the primary caretaker has no significant prior relationship with the child or children in his or her care and both licensed and unlicensed relative and kinship homes;

(7) Kinship home means a home where a child or children receive foster care and at least one of the primary caretakers has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child or children or a sibling of such child or children pursuant to section 43-1311.02;

(8) Native American means a person who is a member of an Indian tribe or eligible for membership in an Indian tribe;

(9) Relative home means a home where a child or children receive foster care and at least one of the primary caretakers is related to the child or children, or to a sibling of such child or children pursuant to section 43-1311.02, in his or

her care by blood, marriage, or adoption or, in the case of an Indian child, at least one of the primary caretakers is an extended family member as defined in section 43-1503; and

(10) Residential child-caring agency has the definition found in section 71-1926.

**Source:** Laws 1943, c. 154, § 1, p. 563; R.S.1943, § 71-1901; Laws 1945, c. 171, § 1, p. 548; Laws 1961, c. 415, § 25, p. 1258; Laws 1984, LB 130, § 13; Laws 1987, LB 386, § 1; Laws 1993, LB 121, § 425; Laws 1995, LB 401, § 24; Laws 1995, LB 451, § 1; Laws 1996, LB 1044, § 583; Laws 1997, LB 307, § 171; Laws 2001, LB 209, § 19; Laws 2002, LB 93, § 7; Laws 2008, LB797, § 12; Laws 2013, LB265, § 40.

**71-1902 Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.**

(1) The department shall adopt and promulgate rules and regulations on requirements for licenses, waivers, variances, and approval of foster family homes taking into consideration the health, safety, well-being, and best interests of the child. An initial assessment of a foster family home shall be completed and shall focus on the safety, protection, and immediate health, educational, developmental, and emotional needs of the child and the willingness and ability of the foster home, relative home, or kinship home to provide a safe, stable, and nurturing environment for a child for whom the department or child-placing agency has assumed responsibility.

(2)(a) Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for one or more children 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 terms and conditions for licensure may allow foster family homes to meet licensing standards through variances equivalent to the established standards.

(b) 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.

(3) Kinship homes and relative homes are exempt from licensure, however, such homes should make efforts to be licensed if such license will facilitate the permanency plan of the child. The department and child-placing agencies shall, when requested or as part of the child's permanency plan, provide resources for and assistance with licensure, including, but not limited to, information on licensure, waivers for relative homes, kinship-specific and relative-specific foster care training, referral to local service providers and support groups, and funding and resources available to address home safety or other barriers to licensure.

(4) Prior to placement in a nonlicensed relative home or kinship home, approval shall be obtained from the department. Requirements for initial approval shall include, but not be limited to, the initial assessment provided for in subsection (1) of this section, a home visit to assure adequate and safe housing, and a criminal background check of all adult residents. Final approval shall include, but not be limited to, requirements as appropriate under section 71-1903. The department or child-placing agency shall provide assistance to an approved relative home or kinship home to support the care, protection, and nurturing of the child. Support may include, but not be limited to, information on licensure, waivers, and variances, kinship-specific and relative-specific foster care training, mental and physical health care, options for funding for needs of the child, and service providers and support groups to address the needs of relative and kinship parents, families, and children.

(5) 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. A license may be revoked for cause, after notice and hearing, in accordance with rules and regulations adopted and promulgated by the department.

(6) A young adult continuing to reside in a foster family home as provided in subdivision (2) of section 43-4505 does not constitute an unrelated adult for the purpose of determining eligibility of the family to be licensed as a foster family home.

**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; Laws 2013, LB216, § 18; Laws 2013, LB265, § 41.

**71-1903 Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.**

(1) Before issuance of a license under sections 71-1901 to 71-1906.01, the department shall cause such investigation to be made as it deems necessary to determine if the character of the applicant, any member of the applicant's household, or the person in charge of the service and the place where the foster care is to be furnished are such as to ensure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01, payable by the licensee or applicant for a license, except that the department may pay the fee for inspection for fire safety of homes where foster care is provided. The department may conduct sanitation and health standards investigations pursu-

ant to subsection (2) of this section. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing foster care to see that such service is being properly conducted.

(2) The department shall make an investigation and report of all licensed foster care providers subject to this section or applicants for licenses to provide such care to determine if standards of health and sanitation set by the department for the care and protection of the child or children who may be placed in foster family homes are being met. The department may delegate the investigation authority to qualified local environmental health personnel.

(3) Before the foster care placement of any child in Nebraska by the department, the department shall require a national criminal history record information check of the prospective foster parent of such child and each member of such prospective foster parent's household who is eighteen years of age or older. The department shall provide two sets of legible fingerprints for such persons to the Nebraska State Patrol for submission to the Federal Bureau of Investigation. The Nebraska State Patrol shall conduct a criminal history record information check of such persons and shall submit such fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report of the results of such criminal history record information check to the department. The department shall pay a fee to the Nebraska State Patrol for conducting such check. Information received from the criminal history record information check required under this subsection shall be used solely for the purpose of evaluating and confirming information provided by such persons for providing foster care or for the finalization of an adoption. A child may be placed in foster care by the department prior to the completion of a criminal history record information check under this subsection in emergency situations as determined by the department.

**Source:** Laws 1943, c. 154, § 3, p. 564; R.S.1943, § 71-1903; Laws 1945, c. 171, § 3, p. 549; Laws 1961, c. 415, § 27, p. 1259; Laws 1967, c. 446, § 2, p. 1388; Laws 1983, LB 498, § 2; Laws 1985, LB 447, § 37; Laws 1987, LB 386, § 3; Laws 1988, LB 930, § 2; Laws 1991, LB 836, § 28; Laws 1995, LB 401, § 26; Laws 1995, LB 451, § 3; Laws 1996, LB 1044, § 584; Laws 1997, LB 307, § 172; Laws 1997, LB 622, § 101; Laws 2001, LB 209, § 21; Laws 2002, LB 93, § 9; Laws 2004, LB 1005, § 66; Laws 2007, LB296, § 497; Laws 2013, LB265, § 42.

**71-1904 Rules and regulations; waiver of licensing standard; when; department; report.**

(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 department may issue a waiver for any licensing standard not related to children's safety for a relative home that is pursuing licensure. Such waivers shall be granted on a case-by-case basis upon assessment by the department based upon the best interests of the child. A relative home that receives a waiver pursuant to this subsection shall be considered fully licensed for purposes of federal reimbursement under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351. 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 homes. For 2013 and 2014, the department shall provide the report electronically to the Health and Human Services Committee of the Legislature on or before September 15.

(3) The department shall adopt and promulgate rules and regulations establishing new foster home licensing requirements that ensure children's safety, health, and well-being but minimize the use of licensing mandates for nonsafety issues. Such rules and regulations shall provide alternatives to address nonsafety issues regarding housing and provide assistance to families in overcoming licensing barriers, especially in child-specific relative and kinship placements, to maximize appropriate reimbursement under Title IV-E of the federal Social Security Act, as amended, including expanding the use of kinship guardianship assistance payments under 42 U.S.C. 673(d), as such act and section existed on January 1, 2013.

**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; Laws 2013, LB222, § 26; Laws 2013, LB265, § 43; Laws 2013, LB269, § 9.

#### **71-1907 Child passenger restraint; requirements; violation; penalty.**

Any person furnishing foster care who is subject to licensure under section 71-1902 or the Children's Residential Facilities and Placing Licensure Act, when transporting in a motor vehicle any children for whom care is being furnished, shall use an approved child passenger restraint system for each child, except that an occupant protection system or a three-point safety belt system as defined in section 60-6,265 may be used for any child six years of age or older.

Any person violating this section shall be guilty of an infraction as defined in section 29-431 and shall have his or her license to furnish foster care revoked or suspended by the Department of Health and Human Services.

For purposes of this section, approved child passenger restraint system shall mean a restraint system which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on July 20, 2002.

**Source:** Laws 1982, LB 69, § 1; Laws 1987, LB 386, § 4; Laws 1992, LB 958, § 10; Laws 1993, LB 370, § 475; Laws 1995, LB 401, § 28;



Laws 1996, LB 1044, § 586; Laws 1997, LB 307, § 174; Laws 2000, LB 410, § 3; Laws 2002, LB 1073, § 3; Laws 2013, LB265, § 44; Laws 2015, LB231, § 43.

**Cross References**

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

**(b) CHILD CARE LICENSURE**

**71-1908 Act, how cited; legislative findings.**

(1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

**Source:** Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67; Laws 2013, LB105, § 1.

**71-1911 Licenses; when required; issuance; corrective action status; display of license.**

(1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this section.

(2) No person shall operate or offer to operate a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of such person without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. The license may be a provisional license or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs operating for two or three children from different families may continue to license persons providing such programs. If the license of a person is suspended or revoked other than for nonpayment of fees, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the department for the first year of operation. At the end of one year of operation,

the department shall either issue an operating license, extend the provisional license, or deny the operating license. The provisional license may be extended once for a period of no more than six months. The decision regarding extension of the provisional license is not appealable. The provisional license may be extended if:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may place a provisional or operating license on corrective action status. Corrective action status is voluntary and may be in effect for up to six months. The decision regarding placement on corrective action status is not a disciplinary action and is not appealable. If the written plan of correction is not approved by the department, the department may discipline the license. A probationary license may be issued for the licensee to operate under corrective action status if the department determines that:

(a) The licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

(6) The license, including any applicable status or amendment, shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports shall be made available by the licensee for public inspection upon request.

**Source:** Laws 1984, LB 130, § 4; Laws 1988, LB 1013, § 1; Laws 1991, LB 836, § 30; Laws 1993, LB 510, § 1; Laws 1995, LB 401, § 32; Laws 1997, LB 310, § 6; Laws 1997, LB 752, § 177; Laws 1998, LB 1354, § 33; Laws 1999, LB 594, § 52; Laws 2004, LB 1005, § 70; Laws 2006, LB 994, § 98; Laws 2014, LB1050, § 2.

### **71-1911.03 Applicant; liability insurance.**

An applicant for a license under the Child Care Licensing Act shall provide to the department written proof of liability insurance coverage of at least one hundred thousand dollars per occurrence prior to issuance of the license. A licensee subject to the Child Care Licensing Act on July 1, 2014, shall obtain such liability insurance coverage and provide written proof to the department within thirty days after July 1, 2014. Failure by a licensee to maintain the

required level of liability insurance coverage shall be deemed noncompliance with the Child Care Licensing Act. If the licensee is the State of Nebraska or a political subdivision, the licensee may utilize a risk retention group or a risk management pool for purposes of providing such liability insurance coverage or may self-insure all or part of such coverage.

**Source:** Laws 2013, LB105, § 2.

**71-1912 Department; investigation; inspections.**

(1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs by making a national criminal history record information check. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

**Source:** Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33; Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73; Laws 2014, LB1050, § 3.

**71-1919 License denial; disciplinary action; grounds.**

The department may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;

(2) Violation of an order of the department under the act;

(3) Conviction of, or substantial evidence of committing or permitting, aiding, or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and

(g) Use of a weapon in the commission of an unlawful act;

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;

(5) Failure to allow an agent or employee of the department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(6) Failure to allow state or local inspectors, investigators, or law enforcement officers access to the program for the purposes of investigation necessary to carry out their duties;

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;

(8) Failure to comply with or violation of the Medication Aide Act;

(9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;

(10) Violation of any city, village, or county rules, regulations, or ordinances regulating licensees;

(11) Failure to pay fees required under the Child Care Licensing Act; or

(12) Failure to comply with the Step Up to Quality Child Care Act.

**Source:** Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505; Laws 2013, LB507, § 16.

#### Cross References

**Medication Aide Act**, see section 71-6718.

**Step Up to Quality Child Care Act**, see section 71-1952.

### (c) CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

#### **71-1924 Act, how cited.**

Sections 71-1924 to 71-1951 shall be known and may be cited as the Children's Residential Facilities and Placing Licensure Act.

**Source:** Laws 2013, LB265, § 1.

**71-1925 Purpose of act.**

The purpose of the Children's Residential Facilities and Placing Licensure Act is to protect the public health and the health, safety, and welfare of children who reside in or who are placed in settings other than the home of their parent or legal guardian by providing for the licensing of residential child-caring agencies and child-placing agencies in the State of Nebraska. The act provides for the development, establishment, and enforcement of basic standards for residential child-caring agencies and child-placing agencies.

**Source:** Laws 2013, LB265, § 2.

**71-1926 Terms, defined.**

For purposes of the Children's Residential Facilities and Placing Licensure Act:

(1) Care means the provision of room and board and the exercise of concern and responsibility for the safety and welfare of children on a twenty-four-hour-per-day basis in settings that serve as the out-of-home placement for children;

(2) Child means a minor less than nineteen years of age;

(3) Child-placing agency means any person other than the parent or legal guardian of a child that receives the child for placement and places or arranges for the placement of a child in a foster family home, adoptive home, residential child-caring agency, or independent living;

(4) Department means the Division of Public Health of the Department of Health and Human Services;

(5) Director means the Director of Public Health of the Division of Public Health;

(6) Person includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(7) Residential child-caring agency means a person that provides care for four or more children and that is not a foster family home as defined in section 71-1901.

**Source:** Laws 2013, LB265, § 3.

**71-1927 Residential child-caring agency or child-placing agency; license required; current license holders; how treated.**

(1) Except as provided in subsection (2) of this section, a residential child-caring agency or child-placing agency shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Children's Residential Facilities and Placing Licensure Act. No person shall hold itself out as a residential child-caring agency or child-placing agency or as providing such services unless licensed under the act. The department shall issue a license to a residential child-caring agency or a child-placing agency that satisfies the requirements for licensing under the act.

(2) A group home, child-caring agency, or child-placing agency licensed under sections 71-1901 to 71-1906.01 on May 26, 2013, shall be deemed licensed under the Children's Residential Facilities and Placing Licensure Act until the license under such sections expires, and renewal shall be under the act.

(3) For purposes of requiring licensure, a residential child-caring agency or child-placing agency does not include an individual licensed as a foster family home under sections 71-1901 to 71-1906.01, a person licensed under the Health Care Facility Licensure Act, a person operating a juvenile detention facility as defined in section 83-4,125, a staff secure youth confinement facility operated by a county, or a person providing only casual care for children at irregular intervals. Such persons may voluntarily apply for a license.

**Source:** Laws 2013, LB265, § 4.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

**71-1928 Applicant for license or renewal; application; requirements; contents.**

(1) An applicant for an initial or renewal license to operate a residential child-caring agency or a child-placing agency shall file a written application with the department. To be licensed as a child-placing agency, an applicant must be a corporation, nonprofit corporation, or limited liability company. The application shall be accompanied by the applicable fees under section 71-1929 and shall set forth the full name and address of the agency to be licensed, the full name and address of the owner of the agency, the names of all persons in control of the agency, and additional information as required by the department, including sufficient affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Children's Residential Facilities and Placing Licensure Act and evidence of adequate liability insurance or, if self-insured, of sufficient funds to pay liability claims. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by:

(a) The owner, if the applicant for licensure as a residential child-caring agency is an individual or partnership;

(b) Two of its members, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a limited liability company;

(c) Two of its officers who have the authority to bind the corporation to the terms of the application, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a corporation or a nonprofit corporation; or

(d) The head of the governmental unit having jurisdiction over the residential child-caring agency or child-placing agency to be licensed, if the applicant is a governmental unit.

**Source:** Laws 2013, LB265, § 5.

**71-1929 Fees.**

Fees applicable to an applicant for an initial or renewal license under the Children's Residential Facilities and Placing Licensure Act include:

(1) A nonrefundable license fee of twenty-five dollars;

(2) A nonrefundable renewal license fee of twenty-five dollars;



(3) A reinstatement fee of twenty-five dollars if the license has lapsed or has been suspended or revoked; and

(4) A duplicate original license fee of ten dollars when a duplicate is requested.

**Source:** Laws 2013, LB265, § 6.

**71-1930 Licenses; expiration date; not transferable or assignable; public inspection and display.**

(1) Except as otherwise provided in the Children's Residential Facilities and Placing Licensure Act:

(a) Licenses issued under the act shall expire on uniform annual dates established by the department specified in rules and regulations; and

(b) Licenses shall be issued only for the premises and individuals named in the application and shall not be transferable or assignable.

(2) Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

**Source:** Laws 2013, LB265, § 7.

**71-1931 Separate license required; duties of licensee.**

(1) An applicant for licensure under the Children's Residential Facilities and Placing Licensure Act shall obtain a separate license for each type of residential child-caring agency or child-placing agency that the applicant seeks to operate. A single license may be issued for a residential child-caring agency operating in separate buildings or structures on the same premises under one management.

(2) An applicant for licensure shall obtain a separate license for each type of placement service the applicant seeks to provide. When a child-placing agency has more than one office location, the child-placing agency shall inform the department of each office location and the services provided at each location. A single license may be issued for multiple offices, or the applicant may apply for individual licenses for each office location.

**Source:** Laws 2013, LB265, § 8.

**71-1932 Provisional license; period valid; conversion to regular license.**

A provisional license may be issued to an applicant for an initial residential child-caring agency or child-placing agency that substantially complies with requirements for licensure under the Children's Residential Facilities and Placing Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose a danger to the children residing in or served by the residential child-caring agency or child-placing agency. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the agency fully complies with the requirements for licensure under the act and rules and regulations.

**Source:** Laws 2013, LB265, § 9.

**71-1933 Inspection by department; inspection report.**

The department may inspect or provide for the inspection of residential child-caring agencies or child-placing agencies licensed under the Children's Residential Facilities and Placing Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the agency within ten working days after the completion of an inspection.

**Source:** Laws 2013, LB265, § 10.

**71-1934 State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority.**

(1) The department may request the State Fire Marshal to inspect any residential child-caring agency for fire safety under section 81-502. The State Fire Marshal shall assess a fee for such inspection under section 81-505.01 payable by the applicant or licensee. The State Fire Marshal may delegate the authority to make such inspections to qualified local fire prevention personnel under section 81-502.

(2) The department may investigate any residential child-caring agency to determine if the place or places to be covered by the license meet standards of sanitation and physical well-being set by the department for the care and protection of the children who may be placed with the residential child-caring agency. The department may delegate this authority to qualified local environmental health personnel.

**Source:** Laws 2013, LB265, § 11.

**71-1935 Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings.**

If the inspection report issued under section 71-1933 contains findings of noncompliance by a licensed residential child-caring agency or child-placing agency with any applicable provisions of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed under sections 71-1939 to 71-1946, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or welfare of the children residing in or served by the residential child-caring agency or child-placing agency, the department may send a letter to the agency requesting a statement of compliance. The letter shall include a description of each violation, a request that the residential child-caring agency or child-placing agency submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the residential child-caring agency or child-placing agency fails to submit and implement a statement of compliance which indicates a good faith effort to

correct the violations, the department may proceed under sections 71-1939 to 71-1946.

**Source:** Laws 2013, LB265, § 12.

**71-1936 Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity.**

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. An individual submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

**Source:** Laws 2013, LB265, § 13.

**71-1937 Licensee; discrimination or retaliation prohibited; cause of action for relief.**

Licensees shall not discriminate or retaliate against an individual or the family of an individual residing in, served by, or employed at the residential child-caring agency or child-placing agency who has initiated or participated in any proceeding authorized by the Children's Residential Facilities and Placing Licensure Act or who has presented a complaint or provided information to the administrator of the residential child-caring agency or child-placing agency or the department. Such individual may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

**Source:** Laws 2013, LB265, § 14.

**71-1938 Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures.**

(1) Whenever the department finds that an emergency exists requiring immediate action to protect the health, safety, or welfare of a child in a residential child-caring agency or child-placing agency, the department may, without

notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate prohibition on the care or placement of children by the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing, the department shall continue to enforce such order or rescind or modify it.

(2) A copy of the order shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the order shall be sent to the corporation's registered agent.

(3) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Children's Residential Facilities and Placing Licensure Act, an order issued under the act, or any rule or regulation adopted and promulgated under the act. It shall be the duty of each county attorney or the Attorney General to whom the department reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with the act, rules, regulations, and orders. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a residential child-caring agency or a child-placing agency without obtaining a license to do so, without alleging any further or more particular facts concerning the charge.

**Source:** Laws 2013, LB265, § 15.

#### **71-1939 Department; deny or refuse renewal of license; grounds.**

The department may deny or refuse to renew a license under the Children's Residential Facilities and Placing Licensure Act to any residential child-caring agency or child-placing agency that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including:

- (1) Failing an inspection under section 71-1933;
- (2) Having had a license revoked within the two-year period preceding application; or
- (3) Any of the grounds listed in section 71-1940.

**Source:** Laws 2013, LB265, § 16.

#### **71-1940 Deny, refuse renewal, or take disciplinary action against license; grounds.**

The department may deny, refuse to renew, or take disciplinary action against a license issued under the Children's Residential Facilities and Placing Licensure Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the act or the rules and regulations adopted and promulgated under the act;
- (2) Violation of an order of the department under the act;

(3) Conviction, admission, or substantial evidence of committing or permitting, aiding, or abetting another to commit any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where children's residential care or child-placing services are provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; or

(g) Use of a weapon in the commission of an unlawful act;

(4) Conduct or practices detrimental to the health, safety, or welfare of any individual residing in, served by, or employed at the residential child-caring agency or child-placing agency;

(5) Failure to allow an agent or employee of the department access to the residential child-caring agency or child-placing agency for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(6) Failure to allow local or state inspectors, investigators, or law enforcement officers access to the residential child-caring agency or child-placing agency for the purposes of investigation necessary to carry out their duties;

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;

(8) Failure to comply with or violation of the Medication Aide Act;

(9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;

(10) Violation of any city, village, or county rules, regulations, resolutions, or ordinances regulating licensees;

(11) A history of misconduct or violations by an applicant or licensee involving children or vulnerable adults; or

(12) Violation of any federal, state, or local law involving care of children.

**Source:** Laws 2013, LB265, § 17.

#### Cross References

**Medication Aide Act**, see section 71-6718.

**71-1941 License; department; impose disciplinary actions; fine; how treated; recovery.**

(1) The department may impose any one or a combination of the following types of disciplinary actions against the license of a residential child-caring agency or child-placing agency:

(a) A fine not to exceed ten thousand dollars per violation;

(b) A period of probation not to exceed two years, during which time the residential child-caring agency or child-placing agency may continue to operate under terms and conditions fixed by the order of probation;

(c) Restrictions on new admissions to a residential child-caring agency or acceptance of new referrals by a child-placing agency;

(d) Restrictions or other limitations on the number, gender, or age of children served by the residential child-caring agency or child-placing agency;

(e) Other restrictions or limitations on the type of service provided by the residential child-caring agency or child-placing agency;

(f) Suspension of the license for a period not to exceed three years, during which time the licensee shall not operate a residential child-caring agency or child-placing agency; or

(g) Revocation of the license. A former licensee whose license has been revoked shall not apply for a license for a minimum of two years after the date of revocation.

(2) Any fine imposed and unpaid under the Children's Residential Facilities and Placing Licensure Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the residential child-caring agency or child-placing agency is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2013, LB265, § 18.

**71-1942 Disciplinary action; department; considerations.**

In determining what type of disciplinary action to impose, the department may consider:

(1) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(2) The reasonableness of the diligence exercised by the licensee in identifying or correcting the violation;

(3) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;

(4) Any previous violations committed by the licensee; and

(5) The financial benefit to the licensee of committing or continuing the violation.

**Source:** Laws 2013, LB265, § 19.

**71-1943 Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing.**

(1) Except as provided in section 71-1938, if the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last-known address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a



specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for a hearing under section 71-1944.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

**Source:** Laws 2013, LB265, § 20.

**71-1944 Applicant or licensee; notification to department; failure to notify department; effect.**

(1) Within fifteen days after the mailing of a notice under section 71-1943, an applicant or licensee shall notify the department in writing that the applicant or licensee:

- (a) Desires to contest the notice and requests a hearing; or
- (b) Does not contest the notice.

(2) If the department does not receive notification within the fifteen-day period, the action of the department shall be final.

**Source:** Laws 2013, LB265, § 21.

**71-1945 Applicant or licensee; hearing; procedure; director; decision; contents.**

(1) If the applicant or licensee requests a hearing under section 71-1944, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

**Source:** Laws 2013, LB265, § 22.

**71-1946 Decision of department; appeal; procedure.**

Any party to a decision of the department under the Children's Residential Facilities and Placing Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2013, LB265, § 23.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1947 Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period.**

(1) A license issued under the Children's Residential Facilities and Placing Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the fees as provided in section 71-1929.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the fees as provided in section 71-1929.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final fifteen days after mailing the decision to the licensee unless the licensee requests a hearing within such fifteen-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. An application for an initial license may be made at the end of such two-year period.

**Source:** Laws 2013, LB265, § 24.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1948 Voluntary surrender of license.**

A licensee may voluntarily surrender a license issued under the Children's Residential Facilities and Placing Licensure Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee.

**Source:** Laws 2013, LB265, § 25.

**71-1949 Rules and regulations; contested cases; procedure.**

(1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe care of children, the department may adopt and promulgate rules and regulations consistent with the Children's Residential Facilities and Placing Licensure Act as necessary for:

(a) The proper care and protection of children in residential child-caring agencies and child-placing agencies regulated under the act;

(b) The issuance, discipline, and reinstatement of licenses; and

(c) The proper administration of the act.

(2) Such rules and regulations shall establish standards for levels of care and services which may include, but are not limited to, supervision and structured activities designed to address the social, emotional, educational, rehabilitative, medical, and physical needs of children residing in or being placed by a residential child-caring agency or child-placing agency and may include the use of community resources to meet the needs of children and qualifications of staff.

(3) Contested cases of the department under the act shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2013, LB265, § 26.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **71-1950 Violations; penalty.**

Any person who establishes, operates, or maintains a residential child-caring agency or child-placing agency subject to the Children's Residential Facilities and Placing Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such person operates after a first conviction shall be considered a subsequent offense.

**Source:** Laws 2013, LB265, § 27.

#### **71-1951 Existing rules and regulations, licenses, and proceedings; how treated.**

(1) All rules and regulations adopted and promulgated prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, may continue to be effective under the Children's Residential Facilities and Placing Licensure Act to the extent not in conflict with the act.

(2) All licenses issued prior to May 26, 2013, in accordance with sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall remain valid as issued for purposes of the Children's Residential Facilities and Placing Licensure Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall be subject to the provisions of sections 71-1901 to 71-1906.01 or such other statutes as they existed prior to May 26, 2013.

**Source:** Laws 2013, LB265, § 28.

#### (d) STEP UP TO QUALITY CHILD CARE ACT

#### **71-1952 Act, how cited.**

Sections 71-1952 to 71-1964 shall be known and may be cited as the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 1.

**71-1953 Purposes of act.**

The purposes of the Step Up to Quality Child Care Act are to (1) provide accountability for public funds invested in child care and early childhood education programs, (2) provide a path to higher quality for child care and early childhood education programs, (3) provide parents a tool by which to evaluate the quality of child care and early childhood education programs, and (4) improve child development and school readiness outcomes.

**Source:** Laws 2013, LB507, § 2.

**71-1954 Terms, defined.**

For purposes of the Step Up to Quality Child Care Act:

(1) Applicable child care and early childhood education programs include:

(a) Child care programs licensed under the Child Care Licensing Act which serve children from birth to kindergarten-entrance age;

(b) Prekindergarten services and prekindergarten programs established pursuant to section 79-1104; and

(c) The federal Head Start programs, 42 U.S.C. 9831 et seq., and Early Head Start programs, 42 U.S.C. 9840a; and

(2) Fiscal year means the fiscal year of the State of Nebraska.

**Source:** Laws 2013, LB507, § 3.

## Cross References

Child Care Licensing Act, see section 71-1908.

**71-1955 Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.**

The State Department of Education and the Department of Health and Human Services shall collaborate (1) to develop, implement, and provide oversight for a quality rating and improvement system for participating applicable child care and early childhood education programs, (2) to establish quality rating criteria for the system as provided in sections 71-1956 and 71-1958, (3) to use the quality rating criteria to assign quality scale ratings to participating applicable child care and early childhood education programs as provided in sections 71-1956 and 71-1958, and (4) to provide incentives and support, including professional development, training, and postsecondary education opportunities, to participating applicable child care and early childhood education programs as provided in section 71-1961.

**Source:** Laws 2013, LB507, § 4.

**71-1956 Child care and early childhood education program; rating; quality rating criteria.**

(1) Each applicable child care and early childhood education program which applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955 shall be rated on a quality scale using ratings labeled steps one through five and based on quality rating criteria.

(2) Quality rating criteria shall be used to assign a quality scale rating as appropriate for the specific step. The criteria shall include, but not be limited to:

- (a) Licensing requirements as specified in the Child Care Licensing Act;
- (b) Facility safety and management;
- (c) Child development and school readiness outcomes;
- (d) Program curriculum, learning environment, and adult-child interactions;
- (e) Professional development and training;
- (f) Family engagement;
- (g) Program administration;
- (h) Standards used by nationally recognized accrediting bodies approved by the State Department of Education; and
- (i) Other standards as required by the State Department of Education for prekindergarten services and prekindergarten programs established pursuant to section 79-1104 and federal performance standards for Head Start and Early Head Start programs.

**Source:** Laws 2013, LB507, § 5.

#### Cross References

**Child Care Licensing Act**, see section 71-1908.

### **71-1957 Participation in quality rating and improvement system.**

Application to participate in the quality rating and improvement system shall be voluntary for applicable child care and early childhood education programs with the following exceptions:

(1) Beginning July 1, 2014, and not later than December 31, 2014, each applicable child care or early childhood education program that received over five hundred thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958;

(2) Beginning July 1, 2015, and not later than December 31, 2015, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958; and

(3) Beginning July 1, 2016, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 in the preceding fiscal year shall, not later than December 31 of the applicable year or six months after actual receipt of such assistance, whichever is later, apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958.

**Source:** Laws 2013, LB507, § 6.

### **71-1958 Quality scale rating; application; assignment of rating.**

(1) Quality rating criteria shall be used as provided in this section to assign a quality scale rating to each applicable child care or early childhood education program if the program applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955.

(2) Licensure under the Child Care Licensing Act for a program which serves children from birth to kindergarten-entrance age shall be sufficient criteria to be rated at step one.

(3) Meeting criteria established by the State Department of Education for a prekindergarten service or prekindergarten program established pursuant to section 79-1104 and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(4) Meeting performance standards required by the federal government for a federal Head Start program or Early Head Start program and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(5) Accreditation by a nationally recognized accrediting body approved by the State Department of Education and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(6) A participating applicable child care or early childhood education program operating under a provisional license shall have a quality scale rating at step one even if it meets other quality rating criteria. If a participating applicable child care or early childhood education program is at a quality scale rating higher than step one and the program's license is placed on disciplinary limitation, probation, or suspension, such program shall have its quality scale rating changed to step one. If an applicable child care or early childhood education program's license is revoked, the program is not eligible to participate in or receive a quality scale rating under the quality rating and improvement system until the program has an operating license which is in full force and effect.

**Source:** Laws 2013, LB507, § 7; Laws 2016, LB1066, § 1.  
Effective date July 21, 2016.

#### Cross References

Child Care Licensing Act, see section 71-1908.

### **71-1959 Quality scale rating review; reevaluation.**

(1) An applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 may apply no more than once each fiscal year to have its quality scale rating reviewed.

(2) A participant shall meet all of the quality rating criteria for a step-two rating prior to applying for a step-three, step-four, or step-five rating. To meet quality rating criteria for a step-three, step-four, or step-five rating, a participant shall be independently evaluated based upon the quality rating criteria.

(3) A participant with a quality scale rating at step two through step four shall be reevaluated at least once every two fiscal years but no more than once in any fiscal year, including any review pursuant to subsection (1) of this section. A participant with a quality scale rating at step five shall be reevaluated at least once every five years but no more than once in any fiscal year. If a participant has achieved accreditation and is being reevaluated by a nationally recognized accrediting body approved by the State Department of Education,



the state shall make reasonable efforts to conduct its reevaluation in the same fiscal year that the accrediting body is reevaluating the program.

**Source:** Laws 2013, LB507, § 8.

**71-1960 License under Child Care Licensing Act; denial of license or disciplinary act authorized.**

The Department of Health and Human Services may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act to a participating applicable child care or early childhood education program for failure to comply with the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 9.

**Cross References**

**Child Care Licensing Act**, see section 71-1908.

**71-1961 Quality rating and improvement system incentives and support.**

Quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act shall include, but not be limited to:

(1) Tiered child care subsidy reimbursements as provided in section 68-1206 based upon quality scale ratings of step three or higher that reflect the cost of higher quality programs and promote affordability of high-quality child care and early childhood education programs for all families;

(2) Incentive bonuses given to providers of child care and early childhood education programs upon completion of specific requirements of step two ratings or higher to improve quality based upon the quality rating criteria established pursuant to sections 71-1956 and 71-1958;

(3) Professional development, training, and scholarships developed in collaboration with community-based organizations, postsecondary education representatives, and other stakeholders;

(4) Support that expands family engagement in and understanding of high-quality early childhood education in ways that are inclusive and respectful of diversity of families and children with special needs; and

(5) Other incentives as necessary to carry out the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 10.

**71-1962 Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties; develop classification system for employees; use.**

(1) Not later than March 1, 2014, the State Department of Education shall create and operate the Nebraska Early Childhood Professional Record System. The system shall be designed in order to:

(a) Establish a data base of Nebraska's early childhood education workforce;

(b) Verify educational degrees and professional credentials held and relevant training completed by employees of participating applicable child care and early childhood education programs; and

(c) Provide such information to the Department of Health and Human Services for use in evaluating applications to be rated at a step above step one under section 71-1959.

(2) When an applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 applies under section 71-1959 to be rated at a step above step one, the child care or early childhood education program shall report the educational degrees and professional credentials held and relevant training completed by its child care and early childhood education employees to the Nebraska Early Childhood Professional Record System for the program to be eligible for a quality scale rating above step one.

(3) Any child care or early childhood education provider residing or working in Nebraska may report his or her educational degrees and professional credentials held, relevant training completed, and work history to the Nebraska Early Childhood Professional Record System.

(4) The State Department of Education shall develop a classification system for all employees of applicable child care and early childhood education programs listed in the Nebraska Early Childhood Professional Record System. The classification system shall be based on the employees' educational degrees and professional credentials held, relevant training completed, and work history and shall be made up of four levels, with level one being the least qualified and level four being the most qualified. The minimum qualification for an employee to be classified as level one shall be a Child Development Associate Credential or a one-year certificate or diploma in early childhood education or child development. The classification system shall be used for purposes of the tax credit granted in section 77-3605.

**Source:** Laws 2013, LB507, § 11; Laws 2015, LB525, § 1; Laws 2016, LB889, § 9.

Effective date July 21, 2016.

#### **71-1963 Quality scale ratings available on web site; when.**

By July 1, 2017, the Department of Health and Human Services in collaboration with the State Department of Education shall make the quality scale ratings of participating applicable child care and early childhood education programs under the quality rating and improvement system developed pursuant to section 71-1955 available on a publicly accessible web site to provide parents a tool by which to evaluate the quality of child care and early childhood education programs and to promote accountability for public funding of such programs.

**Source:** Laws 2013, LB507, § 12.

#### **71-1964 Rules and regulations.**

The State Department of Education and the Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 13.

## 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.  
 71-2061. Public hospital; indebtedness, how construed; expenditures, limitation; membership interests and contractual joint ventures; how construed.
- (l) NONPROFIT HOSPITAL SALE ACT
- 71-20,104. Acquisition of hospital; approval required; exception; notice; application; procedure.

## (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.

### **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.

**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.

(I) 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.

## ARTICLE 21

### INFANTS

Section

71-2102. Shaken baby syndrome; legislative findings.

#### **71-2102 Shaken baby syndrome; legislative findings.**

The Legislature finds that shaken baby syndrome is the medical term used to describe the violent shaking of an infant or child and the injuries or other results sustained by the infant or child. The Legislature further finds that shaken baby syndrome may occur when an infant or child is violently shaken as part of a pattern of abuse or because an adult has momentarily succumbed to the frustration of responding to a crying infant or child. The Legislature further finds that these injuries can include brain swelling and damage, subdural hemorrhage, intellectual disability, or death. The Legislature further finds and declares that there is a present and growing need to provide programs aimed at reducing the number of cases of shaken baby syndrome in Nebraska.

**Source:** Laws 2006, LB 994, § 148; Laws 2013, LB23, § 33.

## ARTICLE 22

### MATERNAL AND CHILD HEALTH

Section

71-2228. Obtaining benefits; prohibited acts; violation; penalty.

71-2229. Using benefits; prohibited acts; violation; penalty.

#### **71-2228 Obtaining benefits; prohibited acts; violation; penalty.**

Any person who by means of a willfully false statement or representation, by impersonation, or by other device obtains or attempts to obtain or aids or abets



any person to obtain or to attempt to obtain (1) a food instrument to which he, she, or it is not entitled, (2) any supplemental foods to which such person is not entitled, or (3) any other benefit administered by the Department of Health and Human Services under sections 71-2226 and 71-2227 commits an offense and shall, upon conviction, be punished as follows: (a) If the aggregate value of all funds and other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class IV misdemeanor; (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more but less than one thousand five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (c) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is one thousand five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

**Source:** Laws 1987, LB 643, § 20; Laws 1989, LB 344, § 24; Laws 1996, LB 1044, § 621; Laws 2015, LB605, § 81.

**71-2229 Using benefits; prohibited acts; violation; penalty.**

(1) A person commits an offense if he, she, or it knowingly and unlawfully uses, alters, or transfers a food instrument or supplemental food. An offense under this subsection shall be a Class IV misdemeanor if the value of the food instrument or benefit is less than five hundred dollars, shall be a Class III misdemeanor if the value of the food instrument or benefit is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value of the food instrument or benefit is one thousand five hundred dollars or more.

(2) A person commits an offense if he, she, or it (a) knowingly and unlawfully possesses a food instrument or supplemental food, (b) knowingly and unlawfully redeems a food instrument, (c) knowingly falsifies or misapplies a food instrument, or (d) fraudulently obtains a food instrument. An offense under this subsection shall be a Class IV misdemeanor if the value of the food instrument or benefit is less than five hundred dollars, shall be a Class III misdemeanor if the value of the food instrument or benefit is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value of the food instrument or benefit is one thousand five hundred dollars or more.

(3) A person commits an offense if he, she, or it knowingly and unlawfully possesses a blank authorization to participate in the WIC program or CSF program. An offense under this subsection shall be a Class IV felony.

(4) When food instruments or supplemental foods are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

**Source:** Laws 1987, LB 643, § 21; Laws 1989, LB 344, § 25; Laws 2015, LB605, § 82.

**PUBLIC HEALTH AND WELFARE**

**ARTICLE 24**

**DRUGS**

**(a) ADULTERATION OR MISBRANDING**

Section

- 71-2401. Transferred to section 71-2461.
- 71-2402. Transferred to section 71-2470.
- 71-2403. Repealed. Laws 2015, LB 37, § 93.
- 71-2404. Transferred to section 71-2480.
- 71-2405. Transferred to section 71-2481.

**(c) EMERGENCY BOX DRUG ACT**

- 71-2411. Terms, defined.
- 71-2417. Controlled substance; exemption.

**(e) RETURN OF DISPENSED DRUGS AND DEVICES**

- 71-2421. Transferred to section 38-28,107.

**(f) CANCER DRUG REPOSITORY PROGRAM ACT**

- 71-2426. Cancer drug; accepted or dispensed; conditions.
- 71-2427. Participant; duties; fee authorized.

**(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT**

- 71-2440. Immunosuppressant drug; accepted or dispensed; conditions.
- 71-2441. Participant; duties; resale prohibited.

**(j) AUTOMATED MEDICATION SYSTEMS ACT**

- 71-2444. Act, how cited.
- 71-2445. Terms, defined.
- 71-2446. Automated machine prohibited.
- 71-2447. Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.
- 71-2448. Prescription medication distribution machine; requirements; location.
- 71-2449. Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.
- 71-2451. Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements.
- 71-2451.01. Management of long-term care facility; prohibited acts.
- 71-2452. Violations; disciplinary action.

**(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.

**(l) PRESCRIPTION DRUG MONITORING PROGRAM**

- 71-2454. Prescription drug monitoring; system established; provisions included; not public records.
- 71-2454.01. Veterinary Prescription Monitoring Program Task Force; created; duties; members; meeting; report.
- 71-2455. Prescription drug monitoring; Department of Health and Human Services; duties; powers.
- 71-2456. Prescription Drug Monitoring Program Fund; created; investment.

**(m) PRESCRIPTION DRUG SAFETY ACT**

- 71-2457. Act, how cited.
- 71-2458. Definitions, where found.
- 71-2459. Administer, defined.
- 71-2460. Administration, defined.
- 71-2461. Adulterated drug, defined.
- 71-2462. Chart order, defined.
- 71-2463. Compounding, defined.

## Section

- 71-2464. Controlled substance, defined.  
 71-2465. Dispense or dispensing, defined.  
 71-2466. Distribute, defined.  
 71-2467. Drugs, medicines, and medicinal substances, defined.  
 71-2468. Labeling, defined.  
 71-2469. Medical order, defined.  
 71-2470. Misbranded drug, defined.  
 71-2471. Pharmacist, defined.  
 71-2472. Pharmacy, defined.  
 71-2473. Practitioner, defined.  
 71-2474. Prescribe, defined.  
 71-2475. Prescription, defined.  
 71-2476. Prescription drug or device or legend drug or device, defined.  
 71-2477. Act; how construed; practitioner; duties; compound or reconstitute drug; duties.  
 71-2478. Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts.  
 71-2479. Legend drug not a controlled substance; prescription; retention; label; contents.  
 71-2480. Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition.  
 71-2481. Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited.  
 71-2482. Drugs; violations; penalties.  
 71-2483. Communication authorized.

## (a) ADULTERATION OR MISBRANDING

**71-2401 Transferred to section 71-2461.**

**71-2402 Transferred to section 71-2470.**

**71-2403 Repealed. Laws 2015, LB 37, § 93.**

**71-2404 Transferred to section 71-2480.**

**71-2405 Transferred to section 71-2481.**

## (c) EMERGENCY BOX DRUG ACT

**71-2411 Terms, defined.**

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

(2) Department means the Department of Health and Human Services;

(3) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

**Source:** Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194; Laws 2009, LB195, § 69; Laws 2013, LB23, § 34.

#### Cross References

Health Care Facility Licensure Act, see section 71-401.

### **71-2417 Controlled substance; exemption.**

Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from subsection (3) of section 28-414.03.

**Source:** Laws 1994, LB 1210, § 189; Laws 1995, LB 406, § 38; Laws 1999, LB 594, § 59; Laws 2001, LB 398, § 72; Laws 2009, LB195, § 74; Laws 2014, LB811, § 27.

## (e) RETURN OF DISPENSED DRUGS AND DEVICES

### **71-2421 Transferred to section 38-28,107.**

## (f) CANCER DRUG REPOSITORY PROGRAM ACT

### **71-2426 Cancer drug; accepted or dispensed; conditions.**

(1) A cancer drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. A cancer drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section. An injectable cancer drug may be accepted if it does not have temperature requirements other than controlled room temperature.

(2) A cancer drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as defined in section 71-2461 or 71-2470, (c) such drug has expired while in the repository, or (d) such drug has restricted distribution by the federal Food and Drug Administration.

(3) Subject to limitations provided in this section, unused cancer drugs dispensed under the medical assistance program established pursuant to the Medical Assistance Act may be accepted and dispensed under the program.

**Source:** Laws 2003, LB 756, § 5; Laws 2005, LB 331, § 4; Laws 2006, LB 1116, § 1; Laws 2006, LB 1248, § 77; Laws 2015, LB37, § 74.

**Cross References**

Medical Assistance Act, see section 68-901.

**71-2427 Participant; duties; fee authorized.**

(1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated cancer drugs and shall inspect all such drugs prior to dispensing to determine if they are adulterated or misbranded as defined in section 71-2461 or 71-2470. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) A participant may charge a handling fee for distributing or dispensing cancer drugs under the program. Such fee shall be established in rules and regulations adopted and promulgated by the department. Cancer drugs donated under the program shall not be resold.

**Source:** Laws 2003, LB 756, § 6; Laws 2005, LB 331, § 5; Laws 2015, LB37, § 75.

(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

**71-2440 Immunosuppressant drug; accepted or dispensed; conditions.**

(1) An immunosuppressant drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. An immunosuppressant drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section.

(2) An immunosuppressant drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as defined in section 71-2461 or 71-2470, or (c) such drug has restricted distribution by the federal Food and Drug Administration.

(3) Subject to limitations provided in this section, unused immunosuppressant drugs dispensed under the medical assistance program may be accepted and dispensed under the immunosuppressant drug repository program.

**Source:** Laws 2006, LB 994, § 46; Laws 2015, LB37, § 76.

**71-2441 Participant; duties; resale prohibited.**

(1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated immunosuppressant drugs and shall inspect all such drugs prior to dispensing to determine if the drugs are adulterated or misbranded as defined in section 71-2461 or 71-2470 or if the drugs bear an expiration date prior to the date of

dispensing. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) Immunosuppressant drugs donated under the program shall not be resold.

**Source:** Laws 2006, LB 994, § 47; Laws 2015, LB37, § 77.

#### (j) AUTOMATED MEDICATION SYSTEMS ACT

##### **71-2444 Act, how cited.**

Sections 71-2444 to 71-2452 shall be known and may be cited as the Automated Medication Systems Act.

**Source:** Laws 2008, LB308, § 1; Laws 2013, LB326, § 3.

##### **71-2445 Terms, defined.**

For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored, for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412, or for a resident in a long-term care facility in which a long-term care automated pharmacy is located from which drugs will be dispensed. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care automated pharmacy means a designated area in a long-term care facility where an automated medication system is located, that stores medications for dispensing pursuant to a medical order to residents in such long-term care facility, that is installed and operated by a pharmacy licensed under the Health Care Facility Licensure Act, and that is licensed under section 71-2451;

(6) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(7) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(8) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;



(9) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(10) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

(11) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(12) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(13) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(14) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(15) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

**Source:** Laws 2008, LB308, § 2; Laws 2009, LB195, § 75; Laws 2013, LB23, § 35; Laws 2013, LB326, § 4.

#### Cross References

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

### **71-2446 Automated machine prohibited.**

Any automated machine that dispenses, delivers, or makes available, other than by administration, prescription medication directly to a patient or caregiver without the provision of pharmacist care is prohibited.

**Source:** Laws 2008, LB308, § 3; Laws 2013, LB326, § 5.

### **71-2447 Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.**

Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for

pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

- (1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;
- (2) The name of the pharmacist responsible for implementation of and compliance with the policies and procedures;
- (3) Medication access and information access procedures;
- (4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;
- (5) A description of the process used by a pharmacist or pharmacy technician for filling an automated medication system;
- (6) A description of how and by whom the automated medication system is being utilized, including processes for verifying, dispensing, and distributing medications;
- (7) Staff education and training;
- (8) Quality assurance and quality improvement programs and processes;
- (9) Inoperability or emergency downtime procedures;
- (10) Periodic system maintenance; and
- (11) Medication security and controls.

**Source:** Laws 2008, LB308, § 4; Laws 2009, LB195, § 76; Laws 2013, LB326, § 6.

**71-2448 Prescription medication distribution machine; requirements; location.**

A prescription medication distribution machine:

- (1) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and
- (2) May be operated only (a) in a licensed pharmacy where a pharmacist dispenses medications to patients for self-administration pursuant to a prescription or (b) in a long-term care automated pharmacy subject to section 71-2451.

**Source:** Laws 2008, LB308, § 5; Laws 2013, LB326, § 7.

**71-2449 Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.**

(1) An automated medication distribution machine:

- (a) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and
- (b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

**Source:** Laws 2008, LB308, § 6; Laws 2009, LB195, § 77; Laws 2013, LB326, § 8.

**71-2451 Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements.**

(1) In order for an automated medication system to be operated in a long-term care facility, a pharmacist in charge of a pharmacy licensed under the Health Care Facility Licensure Act and located in Nebraska shall annually license the long-term care automated pharmacy in which the automated medication system is located.

(2) The pharmacist in charge of a licensed pharmacy shall submit an application for licensure or renewal of licensure to the Division of Public Health of the Department of Health and Human Services with a fee in the amount of the fee the pharmacy pays for licensure or renewal. The application shall include:

(a) The name and location of the licensed pharmacy;

(b) If controlled substances are stored in the automated medication system, the federal Drug Enforcement Administration registration number of the licensed pharmacy. After the long-term care automated pharmacy is registered with the federal Drug Enforcement Administration, the pharmacist in charge of the licensed pharmacy shall provide the federal Drug Enforcement Administration registration number of the long-term care automated pharmacy to the division and any application for renewal shall include such registration number;

(c) The location of the long-term care automated pharmacy; and

(d) The name of the pharmacist in charge of the licensed pharmacy.

(3) As part of the application process, the division shall conduct an inspection by a pharmacy inspector as provided in section 38-28,101 of the long-term care automated pharmacy. The division shall also conduct inspections of the operation of the long-term care automated pharmacy as necessary.

(4) The division shall license a long-term care automated pharmacy which meets the licensure requirements of the Automated Medication Systems Act.

(5) A pharmacist in charge of a licensed pharmacy shall apply for a separate license for each location at which it operates one or more long-term care automated pharmacies. The licensed pharmacy shall be the provider pharmacy for the long-term care automated pharmacy.

(6) The pharmacist in charge of the licensed pharmacy operating a long-term care automated pharmacy shall:

(a) Identify a pharmacist responsible for the operation, supervision, policies, and procedures of the long-term care automated pharmacy;

(b) Implement the policies and procedures developed to comply with section 71-2447;

(c) Assure compliance with the drug storage and record-keeping requirements of the Pharmacy Practice Act;

(d) Assure compliance with the labeling requirements of subsection (8) of this section;

(e) Develop and implement policies for the verification of drugs by a pharmacist prior to being loaded into the automated medication system or for the verification of drugs by a pharmacist prior to being released for administration to a resident;

(f) Develop and implement policies for inventory, security, and accountability for controlled substances; and

(g) Assure that each medical order is reviewed by a pharmacist prior to the release of the drugs by the automated medication system. Emergency doses may be taken from an automated medication system prior to review by a pharmacist if the licensed pharmacy develops and implements policies for emergency doses.

(7) Supervision by a pharmacist is sufficient for compliance with the requirement of subdivision (6)(a) of this section if the pharmacist in the licensed pharmacy monitors the automated medication system electronically and keeps records of compliance with such requirement for five years.

(8) Each drug dispensed from a long-term care automated pharmacy shall be in a package with a label containing the following information:

(a) The name and address of the long-term care automated pharmacy;

(b) The prescription number;

(c) The name, strength, and dosage form of the drug;

(d) The name of the resident;

(e) The name of the practitioner who prescribed the drug;

(f) The date of filling; and

(g) Directions for use.

(9) A prescription is required for any controlled substance dispensed from a long-term care automated pharmacy.

(10) The inventory which is transferred to a long-term care automated pharmacy shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

**Source:** Laws 2013, LB326, § 9.

#### Cross References

**Health Care Facility Licensure Act**, see section 71-401.

**Pharmacy Practice Act**, see section 38-2801.

### **71-2451.01 Management of long-term care facility; prohibited acts.**

Unless otherwise allowed by state or federal law or regulation, the management of a long-term care facility at which an automated medication system is located shall not require a resident of the facility to obtain medication through the automated medication system and shall not restrict or impair the ability of a resident of the facility to obtain medications from the pharmacy of the resident's choice.

**Source:** Laws 2013, LB326, § 10.

### **71-2452 Violations; disciplinary action.**

Any person who violates the Automated Medication Systems Act may be subject to disciplinary action by the Division of Public Health of the Department of Health and Human Services under the Health Care Facility Licensure Act or the Uniform Credentialing Act.

**Source:** Laws 2008, LB308, § 8; Laws 2013, LB326, § 11.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

(k) **CORRECTIONAL FACILITIES AND JAILS  
RELABELING AND REDISPENSING**

**71-2453 Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.**

(1) Prescription drugs or devices which have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the 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, if the drug has restricted distribution by the federal Food and Drug Administration, 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 38-2808.01;

(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; Laws 2015, LB37, § 78.

#### (l) PRESCRIPTION DRUG MONITORING PROGRAM

**71-2454 Prescription drug monitoring; system established; provisions included; not public records.**

(1) An entity described in section 71-2455 shall establish a system of prescription drug monitoring for the purposes of (a) preventing the misuse of controlled substances that are prescribed and (b) allowing prescribers and dispensers to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.

(2) Such system of prescription drug monitoring shall be implemented as follows: Except as provided in subsection (4) of this section, beginning January 1, 2017, all dispensed prescriptions of controlled substances shall be reported; and beginning January 1, 2018, all prescription information shall be reported to the prescription drug monitoring system. The prescription drug monitoring system shall include, but not be limited to, provisions that:

(a) Prohibit any patient from opting out of the prescription drug monitoring system;

(b) Require all prescriptions dispensed in this state or to an address in this state to be entered into the system by the dispenser or his or her designee daily after such prescription is dispensed, including those for patients paying cash for such prescription drug or otherwise not relying on a third-party payor for payment for the prescription drug;

(c) Allow all prescribers or dispensers of prescription drugs to access the system at no cost to such prescriber or dispenser; and



(d) Ensure that such system includes information relating to all payors, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act.

Dispensers may begin on February 25, 2016, to report dispensing of prescriptions to the entity described in section 71-2455 which is responsible for establishing the system of prescription drug monitoring.

(3) Prescription information that shall be submitted electronically to the prescription drug monitoring system shall be determined by the entity described in section 71-2455 and shall include, but not be limited to:

- (a) The patient's name, address, and date of birth;
- (b) The name and address of the pharmacy dispensing the prescription;
- (c) The date the prescription is issued;
- (d) The date the prescription is filled;
- (e) The name of the drug dispensed or the National Drug Code number as published by the federal Food and Drug Administration of the drug dispensed;
- (f) The strength of the drug prescribed;
- (g) The quantity of the drug prescribed and the number of days' supply; and
- (h) The prescriber's name and National Provider Identifier number or Drug Enforcement Administration number when reporting a controlled substance.

(4) Beginning January 1, 2018, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to report a dispensed prescription of controlled substances listed on Schedule II, Schedule III, or Schedule IV pursuant to section 28-405.

(5) All prescription drug information submitted pursuant to this section, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system are not public records and may be withheld pursuant to section 84-712.05.

(6) For purposes of this section:

(a) Designee means any licensed or registered health care professional designated by a dispenser to act as an agent of the dispenser for purposes of submitting or accessing data in the prescription drug monitoring system and who is directly supervised by such dispenser;

(b) Dispenser means a person authorized in the jurisdiction in which he or she is practicing to deliver a prescription to the ultimate user by or pursuant to the lawful order of a prescriber but does not include (i) the delivery of such prescription drug for immediate use for purposes of inpatient hospital care or emergency department care, (ii) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber, (iii) a wholesale distributor of a prescription drug monitored by the prescription drug monitoring system, or (iv) through December 31, 2017, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act when dispensing prescriptions for animals in the usual course of providing professional services; and

(c) Prescriber means a health care professional authorized to prescribe in the profession which he or she practices.

**Source:** Laws 2011, LB237, § 1; Laws 2014, LB1072, § 1; Laws 2016, LB471, § 1.

Effective date February 25, 2016.

## Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

**71-2454.01 Veterinary Prescription Monitoring Program Task Force; created; duties; members; meeting; report.**

(1) The Veterinary Prescription Monitoring Program Task Force is created. The task force shall conduct a study to develop recommendations of which controlled substances shall be reported by a veterinarian to the prescription drug monitoring program created under section 71-2454 when dispensing drugs from a veterinarian's office or an animal shelter. The study shall include appropriate methods and procedures of reporting by the veterinarians with the necessary data base field information. The task force shall utilize nationally available resources afforded by the American Association of Veterinary State Boards and the Department of State Legislative and Regulatory Affairs of the American Veterinary Medical Association in development of the recommendations.

(2) The task force shall consist of at least ten members appointed by the chairperson of the Health and Human Services Committee of the Legislature as follows: One member of the Health and Human Services Committee; two at-large members of the Legislature; three members selected from a list of six veterinarians provided by the Board of Veterinary Medicine and Surgery, one of whom is employed by or provides services at an animal shelter; one pharmacist nominated by the Nebraska Pharmacists Association or its successor organization; and two members nominated by the Nebraska Veterinary Medical Association or its successor organization. The task force shall also include a representative of the prescription drug monitoring program who shall be a nonvoting member and serve in an advisory capacity only.

(3) The members of the task force shall be appointed within one hundred twenty days after February 25, 2016. The initial meeting of the task force shall be convened within one hundred eighty days after February 25, 2016. The task force shall elect a chairperson and may elect any additional officers from among its members. All task force members shall serve without compensation.

(4) The task force shall report its findings and recommendations to the Health and Human Services Committee of the Legislature on or before December 1, 2016.

(5) For purposes of this section, animal shelter has the definition found in section 54-626.

**Source:** Laws 2016, LB471, § 2.

Effective date February 25, 2016.

**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. The department may use state funds and accept grants, gifts, or other funds in order to implement and operate the technology. The department may adopt and

promulgate rules and regulations to authorize use of electronic health information, if necessary to carry out the purposes of sections 71-2454 and 71-2455.

**Source:** Laws 2011, LB237, § 2; Laws 2014, LB1072, § 2.

**71-2456 Prescription Drug Monitoring Program Fund; created; investment.**

The Prescription Drug Monitoring Program Fund is created. The Department of Health and Human Services shall administer the fund which shall include any state funds, grants, or gifts received by the department for the purposes of carrying out the purposes of sections 71-2454 and 71-2455. 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 2014, LB1072, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

(m) PRESCRIPTION DRUG SAFETY ACT

**71-2457 Act, how cited.**

Sections 71-2457 to 71-2483 shall be known and may be cited as the Prescription Drug Safety Act.

**Source:** Laws 2015, LB37, § 1.

**71-2458 Definitions, where found.**

For purposes of the Prescription Drug Safety Act, the definitions found in sections 71-2459 to 71-2476 apply.

**Source:** Laws 2015, LB37, § 2.

**71-2459 Administer, defined.**

Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject.

**Source:** Laws 2015, LB37, § 3.

**71-2460 Administration, defined.**

Administration means the act of (1) administering, (2) keeping a record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device.

**Source:** Laws 2015, LB37, § 4.

**71-2461 Adulterated drug, defined.**

Adulterated drug means an article (1) if, when a drug is sold under or by the name recognized in The United States Pharmacopeia and The National Formulary, it differs from the standard of strength, quality, or purity as determined by the test laid down in The United States Pharmacopeia and The National Formulary official at the time of investigation, except that no drug defined in The United States Pharmacopeia and The National Formulary shall be deemed

to be adulterated under this subdivision if the standard of strength or purity is plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in The United States Pharmacopeia and The National Formulary, or (2) if its strength or purity falls below the professed standard of quality under which it is sold.

**Source:** Laws 1941, c. 141, § 9, p. 560; C.S.Supp.,1941, § 81-928; R.S. 1943, § 81-620; R.S.1943, (2009), § 71-2401; Laws 2015, LB37, § 5.

**71-2462 Chart order, defined.**

Chart order has the definition found in section 38-2810.

**Source:** Laws 2015, LB37, § 6.

**71-2463 Compounding, defined.**

Compounding means the preparation of components into a drug product.

**Source:** Laws 2015, LB37, § 7.

**71-2464 Controlled substance, defined.**

Controlled substance has the definition found in section 28-401.

**Source:** Laws 2015, LB37, § 8.

**71-2465 Dispense or dispensing, defined.**

(1) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver as defined in section 38-2809 in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(2) Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver as defined in section 38-2809 other than by administering.

**Source:** Laws 2015, LB37, § 9.

**71-2466 Distribute, defined.**

Distribute means to deliver a drug or device, other than by administering or dispensing.

**Source:** Laws 2015, LB37, § 10.

**71-2467 Drugs, medicines, and medicinal substances, defined.**

Drugs, medicines, and medicinal substances means (1) articles recognized in The United States Pharmacopeia and The National Formulary, the Homeopathic Pharmacopoeia of the United States, or any supplement to any of them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

**Source:** Laws 2015, LB37, § 11.

**71-2468 Labeling, defined.**

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by section 71-2479 and federal law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section.

**Source:** Laws 2015, LB37, § 12.

**71-2469 Medical order, defined.**

Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner.

**Source:** Laws 2015, LB37, § 13.

**71-2470 Misbranded drug, defined.**

(1) Misbranded drug means a drug, the package or label of which bears any statement, design, or device regarding a drug, or the ingredients of substances contained therein, which is false or misleading in any particular, or any drug product which is falsely labeled with the name and place of business of the manufacturer, packager, or distributor.

(2) Misbranded drug includes an article (a) if it is an imitation of or offered for sale under the name of another article, (b) if it is labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up have been removed, in whole or in part, and other contents have been placed in such package, or if the package fails to bear a statement, on the label, of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, phenacetine (acetphenetidine), antipyrine, belladonna, or any derivative or preparation of any such substance contained therein, or (c) if its package or label bears or contains any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false or fraudulent.

**Source:** Laws 1941, c. 141, § 10, p. 561; C.S.Supp.,1941, § 81-929; R.S.1943, § 81-621; R.S.1943, (2009), § 71-2402; Laws 2015, LB37, § 14.

**71-2471 Pharmacist, defined.**

Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy as defined in section 38-2837.

**Source:** Laws 2015, LB37, § 15.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2472 Pharmacy, defined.**

Pharmacy has the same meaning as in section 71-425.

**Source:** Laws 2015, LB37, § 16.

**71-2473 Practitioner, defined.**

Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a pharmacist, a physician assistant, a physician, or a podiatrist credentialed under the Uniform Credentialing Act.

**Source:** Laws 2015, LB37, § 17.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2474 Prescribe, defined.**

Prescribe means to issue a medical order.

**Source:** Laws 2015, LB37, § 18.

**71-2475 Prescription, defined.**

Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order.

**Source:** Laws 2015, LB37, § 19.

**71-2476 Prescription drug or device or legend drug or device, defined.**

(1) Prescription drug or device or legend drug or device means a drug or device:

(a) Which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(i) Caution: Federal law prohibits dispensing without prescription;

(ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

(iii) “Rx Only”; or

(b) Which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend “Caution: Federal law restricts this device to sale by or on the order of a licensed health care practitioner” or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.

**Source:** Laws 2015, LB37, § 20.

**71-2477 Act; how construed; practitioner; duties; compound or reconstitute drug; duties.**



(1) Nothing in the Prescription Drug Safety Act shall be construed as authority for a practitioner to perform any activity he or she is not otherwise authorized to perform by another law of this state.

(2) A practitioner that stores, dispenses, compounds, administers, or otherwise provides any drug to a patient shall comply with the Prescription Drug Safety Act.

(3) A practitioner or authorized person that compounds or reconstitutes any drug shall comply with section 38-2867.01.

**Source:** Laws 2015, LB37, § 21.

**71-2478 Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts.**

(1) Except as otherwise provided in this section or the Uniform Controlled Substances Act or except when administered directly by a practitioner to an ultimate user, a legend drug which is not a controlled substance shall not be dispensed without a written, oral, or electronic prescription. Such prescription shall be valid for twelve months after the date of issuance.

(2) A prescription for a legend drug which is not a controlled substance shall contain the following information prior to being filled by a pharmacist or practitioner who holds a pharmacy license under subdivision (1) of section 38-2850: (a) Patient's name, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of authorized refills, (i) prescribing practitioner's name, and (j) if the prescription is written, prescribing practitioner's signature. Prescriptions for controlled substances must meet the requirements of sections 28-414 and 28-414.01.

(3) A written, signed paper prescription may be transmitted to the pharmacy via facsimile which shall serve as the original written prescription. An electronic prescription may be electronically or digitally signed and transmitted to the pharmacy and may serve as the original prescription.

(4) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain, by means of misrepresentation, fraud, forgery, deception, or subterfuge, possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act which can only be lawfully dispensed, under federal statutes in effect on January 1, 2015, upon the written or oral prescription of a practitioner authorized to prescribe such substances.

**Source:** Laws 2015, LB37, § 22.

**Cross References**

Uniform Controlled Substances Act, see section 28-401.01.

**71-2479 Legend drug not a controlled substance; prescription; retention; label; contents.**

(1) Any prescription for a legend drug which is not a controlled substance shall be kept by the pharmacy or the practitioner who holds a pharmacy license in a readily retrievable format and shall be maintained for a minimum of five years. The pharmacy or practitioner shall make all such files readily available

to the department and law enforcement for inspection without a search warrant.

(2) Before dispensing a legend drug which is not a controlled substance pursuant to a written, oral, or electronic prescription, a label shall be affixed to the container in which the drug is dispensed. Such label shall bear (a) the name, address, and telephone number of the pharmacy or practitioner, (b) the name of the patient, (c) the date of filling, (d) the serial number of the prescription under which it is recorded in the practitioner's prescription records, (e) the name of the prescribing practitioner, (f) the directions for use, (g) the name of the drug, device, or biological unless instructed to omit by the prescribing practitioner, (h) the strength of the drug or biological, if applicable, (i) the quantity of the drug, device, or biological in the container, except unit-dose containers, (j) the dosage form of the drug or biological, and (k) any cautionary statements contained in the prescription.

**Source:** Laws 2015, LB37, § 23.

**71-2480 Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition.**

Any drug which is adulterated or misbranded and which is sold, offered for sale, or delivered within this state shall be liable to be proceeded against where the same is found and seized for confiscation by a process of libel for condemnation. If such drug is condemned as being adulterated or misbranded or of a poisonous or deleterious character, the drug shall be disposed of by destruction or sale as the court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of this state, and such goods shall not be sold in any jurisdiction contrary to the Prescription Drug Safety Act or the laws of that jurisdiction. Any libel proceeding in rem may be joined with any criminal prosecution in personam or may be prosecuted separately.

**Source:** Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-623; R.S.1943, (2009), § 71-2404; Laws 2015, LB37, § 24.

**71-2481 Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited.**

No person shall, within this state, manufacture for sale therein or have in his or her possession with intent to sell, offer or expose for sale, or sell any remedies, medicines, or drugs which are adulterated or misbranded.

**Source:** Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-624; R.S.1943, (2009), § 71-2405; Laws 2015, LB37, § 25.

**71-2482 Drugs; violations; penalties.**

Any person violating any of the provisions of section 71-2478, 71-2480, or 71-2481 is guilty of a Class III misdemeanor. Any person, for a second or subsequent violation of any of the provisions of section 71-2480 or 71-2481, is guilty of a Class II misdemeanor.

**Source:** Laws 2015, LB37, § 26; Laws 2016, LB1094, § 33.  
Effective date April 20, 2016.

**71-2483 Communication authorized.**

An employee or agent of a prescribing practitioner may communicate a prescription, chart order, or refill authorization issued by the prescribing practitioner to a pharmacist or a pharmacist intern except for an emergency oral authorization for a controlled substance listed in Schedule II of section 28-405.

**Source:** Laws 2015, LB37, § 27.

**ARTICLE 25****POISONS****(a) POISON CONTROL ACT**

## Section

- 71-2501. Poison, defined; exceptions.  
 71-2501.01. Act, how cited.  
 71-2502. Poisons; sale; labeling required.  
 71-2505. Act; applicability.  
 71-2506. Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.  
 71-2507. Poisons; sale by person not registered pharmacist prohibited; exception.  
 71-2509. Poisons; restriction to sale upon medical order; power of Department of Health and Human Services.  
 71-2510. Sales excluded from act.  
 71-2510.01. Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.  
 71-2511. Repealed. Laws 2015, LB 37, § 93.  
 71-2512. Violations; penalty.

**(b) LEAD POISONING**

- 71-2516. Department of Health and Human Services; statewide environmental lead hazard awareness action plan; powers.

**(c) LEAD POISONING PREVENTION PROGRAM**

- 71-2518. Lead poisoning prevention program; established; components; results of tests; reports required; department; reports; payment of costs.

**(a) POISON CONTROL ACT****71-2501 Poison, defined; exceptions.**

For purposes of the Poison Control Act:

(1) Poison includes: Arsenic, metallic or elemental, and all poisonous compounds and preparations thereof; corrosive sublimate; white precipitate; red precipitate, mercuric iodide; nitrate of mercury; hydrocyanic acid and all its salts and poisonous compounds; aconitine, arecoline, atropine, brucine, colchicine, coniine, daturine, delphinine, gelsemine, gelseminine, homatropine, hyoscine, hyoscyamine, lobeline, pelletierine, physostigmine, pilocarpine, sparteine, strychnine, veratrine, and all other poisonous alkaloids and their salts, poisonous compounds, and preparations; volatile or essential oil of bitter almonds, natural and artificial; aconite, belladonna, calabar bean, cantharides, colchicum, conium cotton root, cocculus indicum, datura, ergot, gelsemium, henbane, ignatia, lobelia, nux vomica, savin, scopolamine, solanum, stramonium, staphisagra, strophanthus, veratrum viride, and their pharmaceutical preparations and compounds; cantharidin, picrotoxin, elaterin, santonin, their poisonous chemical compounds and derivatives and preparations; ascaridol; volatile oil of mustard, natural and synthetic; oil of tansy; oil of savin, glacial acetic

acid; trichloroacetic acid; aniline oil; benzaldehyde; bromoform; carbolic acid; cresylic acid; chloral hydrate; chromic acid; croton oil; dinitrophenol; mineral acids; oxalic acid; nitrobenzene; phosphorous; paraldehyde; picric acid; salts of antimony; salts of barium, except the sulphate, salts of cobalt, salts of chromium; salts of lead; salts of thallium; salts of zinc; carbon tetrachloride, and silver nitrate; and

(2) Poison does not include:

(a) Agricultural or garden spray, insecticides, concentrated lye, fungicides, rodent destroyers, and other preparations of whatever ingredients, preservative or otherwise for animal or poultry use, for commercial, industrial, manufacturing, or fire protection purposes or any combination of such purposes, and not for human use, when the same are properly packaged, prepared, and labeled with official poison labels in conformity with the terms and provisions of section 71-2502 or the Federal Food, Drug, and Cosmetic Act, as such act existed on May 1, 2001, or the Federal Insecticide, Fungicide, and Rodenticide Act, as such act existed on May 1, 2001;

(b) Preparations prepared by or under the supervision of a governmental agency for use by it or under its direction in the suppression of injurious insect pests and plant diseases destructive to the agricultural and horticultural interests of the state; and

(c) Preparations for the destruction of rodents, predatory animals, or noxious weeds.

**Source:** Laws 1941, c. 141, § 13, p. 562; C.S.Supp.,1941, § 81-932; R.S.1943, § 81-625; Laws 1957, c. 296, § 1, p. 1068; Laws 2001, LB 398, § 75; Laws 2015, LB37, § 80.

#### **71-2501.01 Act, how cited.**

Sections 71-2501 to 71-2512 shall be known and may be cited as the Poison Control Act.

**Source:** Laws 2015, LB37, § 79.

#### **71-2502 Poisons; sale; labeling required.**

It shall be unlawful for any person to vend, sell, dispense, give away, furnish, or otherwise dispose of, or cause to be vended, sold, dispensed, given away, furnished, or otherwise disposed of, either directly or indirectly, any poison without affixing, or causing to be affixed, to the bottle, box, vessel, or package containing the same, a label, printed or plainly written, containing the name of the article, the word poison, the name and place of business of the seller, manufacturer, packager, or distributor, and the date of sale; nor shall it be lawful for any person to deliver any of such poisons until he or she has satisfied himself or herself that the person to whom delivery is made is aware of and understands the poisonous nature of the article and that such poison is to be used for a legitimate purpose.

**Source:** Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-626; Laws 2015, LB37, § 81.

#### **71-2505 Act; applicability.**

(1) The Poison Control Act does not apply to the dispensing of poisons or preparation of medicines by practitioners credentialed under the Uniform

Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501.

(2) The Poison Control Act does not apply to the sale of patent or proprietary medicines in the original package of the manufacturer, packager, or distributor when labeled in conformity with section 71-2502.

**Source:** Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-629; Laws 2007, LB463, § 1203; Laws 2015, LB37, § 82.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2506 Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.**

(1) Whenever, in the judgment of the Department of Health and Human Services, it becomes necessary for the protection of the public to add any poison, not specifically enumerated in section 71-2501, the department shall have printed a revised schedule of all poisons coming under section 71-2501. The department shall forward by mail one copy to each person registered upon its books and to every person applying for same, and the revised schedule shall carry an effective date for the new poisons added. No poison shall be added by the department under this section unless the same shall be as toxic in its effect as any of the poisons enumerated under section 71-2501.

(2) Whenever the department proposes to bring any additional poisons under section 71-2501, the proposal shall be set down for hearing. At least ten days' notice of such hearing shall be given by the department. The notice shall designate the poison to be added and shall state the time and place of the hearing. Such notice shall be given by such means as the department determines to be reasonably calculated to notify the various interested parties. The department may adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary.

(3) Any person aggrieved by any order of the department passed pursuant to this section may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-630; Laws 1988, LB 352, § 127; Laws 1996, LB 1044, § 627; Laws 2007, LB296, § 546; Laws 2015, LB37, § 83.

**Cross References**

Administrative Procedure Act, see section 84-920.

**71-2507 Poisons; sale by person not registered pharmacist prohibited; exception.**

It shall be unlawful for any person, other than a duly registered pharmacist, to sell or dispense poisons as named in section 71-2501, except as otherwise provided in section 71-2501.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-631; Laws 2015, LB37, § 84.

**71-2509 Poisons; restriction to sale upon medical order; power of Department of Health and Human Services.**

The Department of Health and Human Services may adopt and promulgate rules and regulations, whenever such action becomes necessary for the protection of the public, to prohibit the sale of any poison, subject to this section, except upon the original written, oral, or electronic medical order of practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501. Whenever in the opinion of the department it is in the interest of the public health, the department may adopt and promulgate rules and regulations, not inconsistent with the Poison Control Act, further restricting or prohibiting the retail sale of any poison. The rules and regulations must be applicable to all persons alike. The department shall, upon request by any person authorized by the Poison Control Act to sell or dispense any poisons, furnish such person with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by the Poison Control Act.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-633; Laws 1996, LB 1044, § 628; Laws 2007, LB296, § 547; Laws 2007, LB463, § 1204; Laws 2015, LB37, § 85.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2510 Sales excluded from act.**

The Poison Control Act does not apply to sales of poisons made to practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501, to sales made by any manufacturer, wholesale dealer, or licensed pharmacist to another manufacturer, wholesale dealer, or licensed pharmacist, to a hospital, college, school, or scientific or public institution, or to any person using any of such poisons in the arts or for industrial, manufacturing, or agricultural purposes and believed to be purchasing any poison for legitimate use, or to the sales of pesticides used in agricultural and industrial arts or products used for the control of insect or animal pests or weeds or fungus diseases, if in all such cases, except sales for use in industrial arts, manufacturing, or processing, the poisons are labeled in accordance with section 71-2502.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-634; Laws 1993, LB 588, § 36; Laws 2007, LB463, § 1205; Laws 2015, LB37, § 86.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2510.01 Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.**

(1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or



printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.

(2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.

(3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 85; Laws 1993, LB 121, § 176; R.S.1943, (2008), § 28-425; Laws 2015, LB37, § 87.

**71-2511 Repealed. Laws 2015, LB 37, § 93.**

**71-2512 Violations; penalty.**

Any person violating any of the provisions of the Poison Control Act, except as specific penalties are otherwise imposed, is guilty of a Class III misdemeanor. Any person, for a second or subsequent violation of any of the provisions of the Poison Control Act, when another specific penalty is not expressly imposed, is guilty of a Class II misdemeanor.

**Source:** Laws 1941, c. 141, § 17, p. 567; C.S.Supp.,1941, § 81-935; R.S.1943, § 81-636; Laws 1972, LB 1067, § 3; Laws 1977, LB 39, § 167; Laws 1988, LB 1100, § 131; Laws 1988, LB 1012, § 12; Laws 2015, LB37, § 88.

(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 organizations in a comprehensive program to ensure that the state's children are appropriately protected from environmental lead hazards;

(2) Apply for and receive public and private awards to develop and administer a statewide comprehensive environmental lead hazard awareness action plan program;

(3) Provide environmental lead hazard information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize the protection of children from environmental lead poisoning and the use of private practitioners; and

(5) Evaluate the effectiveness of these statewide efforts, identify children at special risk for environmental lead hazard exposure, and report 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.

(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 electronically 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; Laws 2013, LB222, § 27.

## Cross References

Medical Assistance Act, see section 68-901.

**ARTICLE 30****NEBRASKA MENTAL HEALTH FIRST AID TRAINING**

## Section

- 71-3001. Act, how cited.
- 71-3002. Legislative findings.
- 71-3003. Terms, defined.
- 71-3004. Mental health first aid training program; Division of Behavioral Health of Department of Health and Human Services; duties.
- 71-3005. Efficacy of mental health first aid training program; behavioral health regions; report.
- 71-3006. Behavioral health regions; duties.
- 71-3007. Legislative intent.

**71-3001 Act, how cited.**

Sections 71-3001 to 71-3007 shall be known and may be cited as the Nebraska Mental Health First Aid Training Act.

**Source:** Laws 2014, LB901, § 2.

**71-3002 Legislative findings.**

The Legislature finds that:

(1) National statistics show that one in four Americans will face a mental illness in his or her lifetime;

(2) Mental health first aid builds an understanding of how mental illness affects Nebraskans, provides an overview of common treatments, and teaches basic skills for providing assistance to a person who may be developing symptoms or experiencing a crisis;

(3) A mental health first aid program is an education program recognized on the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices; and

(4) The Behavioral Health Education Center administered by the University of Nebraska Medical Center has conducted a series of mental health first aid training courses and the experience of providing such courses may be utilized regarding the implementation of a mental health first aid training program as prescribed by the Nebraska Mental Health First Aid Training Act.

**Source:** Laws 2014, LB901, § 3.

**71-3003 Terms, defined.**

For purposes of the Nebraska Mental Health First Aid Training Act:

(1) Behavioral health regions means the behavioral health regions established pursuant to section 71-807; and

(2) Mental health first aid means the help provided to a person who is experiencing a mental health or substance abuse problem or in a mental health crisis before appropriate professional assistance or other supports are secured.

**Source:** Laws 2014, LB901, § 4.

**71-3004 Mental health first aid training program; Division of Behavioral Health of Department of Health and Human Services; duties.**

(1) The Division of Behavioral Health of the Department of Health and Human Services shall establish a mental health first aid training program, using contracts through the behavioral health regions, to help the public identify and understand the signs of a mental illness or substance abuse problem or a mental health crisis and to provide the public with skills to help a person who is developing or experiencing a mental health or substance abuse problem or a mental health crisis and to de-escalate crisis situations if needed. The training program shall provide an interactive mental health first aid training course administered by the state's regional behavioral health authorities. Instructors in the training program shall be certified by a national authority for Mental Health First Aid USA or a similar organization. The training program shall work cooperatively with local entities to provide training for individuals to become instructors.

(2) The mental health first aid training program shall be designed to train individuals to accomplish the following objectives as deemed appropriate considering the trainee's age:

(a) Help the public identify, understand, and respond to the signs of mental illness and substance abuse;

(b) Emphasize the need to reduce the stigma of mental illness; and

(c) Assist a person who is believed to be developing or has developed a mental health or substance abuse problem or who is believed to be experiencing a mental health crisis.

**Source:** Laws 2014, LB901, § 5.

**71-3005 Efficacy of mental health first aid training program; behavioral health regions; report.**

The Division of Behavioral Health of the Department of Health and Human Services shall ensure that evaluative criteria are established which measure the efficacy of the mental health first aid training program, including trainee feedback, with the objective of helping the public identify, understand, and respond to the signs of mental illness and alcohol and substance abuse. The behavioral health regions shall submit an aggregated annual report electronically to the Legislature on trainee demographics and outcomes of the established criteria.

**Source:** Laws 2014, LB901, § 6.

**71-3006 Behavioral health regions; duties.**

The behavioral health regions shall offer services to and work with agencies and organizations, including, but not limited to, schools, universities, colleges, the State Department of Education, the Department of Veterans' Affairs, law enforcement agencies, and local health departments, to develop a program that offers grants to implement the Nebraska Mental Health First Aid Training Act in ways that are representative and inclusive with respect to the economic and cultural diversity of this state.

**Source:** Laws 2014, LB901, § 7.

**71-3007 Legislative intent.**

It is the intent of the Legislature to appropriate one hundred thousand dollars annually to the Department of Health and Human Services to carry out the Nebraska Mental Health First Aid Training Act.

**Source:** Laws 2014, LB901, § 8.

**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 AND MATERNAL DEATHS**

Section

71-3404. Act, how cited; child deaths; maternal deaths; legislative findings and intent.

71-3405. Terms, defined.

71-3406. State Child and Maternal Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.

## Section

- 71-3407. Team; purposes; duties.  
71-3408. Chairperson; team coordinator; duties.  
71-3409. Review of child deaths; review of maternal deaths; manner.  
71-3410. Provision of information and records; subpoenas.  
71-3411. Information and records; confidentiality; release; conditions; disclosure; limitations.

## (b) CHILD AND MATERNAL DEATHS

**71-3404 Act, how cited; child deaths; maternal deaths; legislative findings and intent.**

(1) Sections 71-3404 to 71-3411 shall be known and may be cited as the Child and Maternal Death Review Act.

(2) The Legislature finds and declares that it is in the best interests of the state, its residents, and especially the children of this state that the number and causes of death of children in this state be examined. There is a need for a comprehensive integrated review of all child deaths in Nebraska and a system for statewide retrospective review of existing records relating to each child death.

(3) The Legislature further finds and declares that it is in the best interests of the state and its residents that the number and causes of maternal death in this state be examined. There is a need for a comprehensive integrated review of all maternal deaths in Nebraska and a system for statewide retrospective review of existing records relating to each maternal death.

(4) It is the intent of the Legislature, by creation of the Child and Maternal Death Review Act, to:

(a) Identify trends from the review of past records to prevent future child and maternal deaths from similar causes when applicable;

(b) Recommend systematic changes for the creation of a cohesive method for responding to certain child and maternal deaths; and

(c) When appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

**Source:** Laws 1993, LB 431, § 1; Laws 2013, LB361, § 1.

**71-3405 Terms, defined.**

For purposes of the Child and Maternal Death Review Act:

(1) Child means a person from birth to eighteen years of age;

(2) Investigation of child death means a review of existing records and other information regarding the child from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, records of alternative response cases under alternative response demonstration projects implemented in accordance with sections 28-710.01, 28-712, and 28-712.01, educational records, emergency and paramedic records, and law enforcement reports;

(3) Investigation of maternal death means a review of existing records and other information regarding the woman from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's



reports, autopsy reports, social services records, educational records, emergency and paramedic records, and law enforcement reports;

(4) Maternal death means the death of a woman during pregnancy or the death of a postpartum woman;

(5) Postpartum woman means a woman during the period of time beginning when the woman ceases to be pregnant and ending one year after the woman ceases to be pregnant;

(6) Preventable child or maternal death means the death of any child or pregnant or postpartum woman which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child or maternal death includes, but is not limited to, the death of a child or pregnant or postpartum woman from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

(7) Reasonable means taking into consideration the condition, circumstances, and resources available; and

(8) Team means the State Child and Maternal Death Review Team.

**Source:** Laws 1993, LB 431, § 2; Laws 2013, LB361, § 2; Laws 2014, LB853, § 46.

**71-3406 State Child and Maternal Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.**

(1) The chief executive officer of the Department of Health and Human Services shall appoint a minimum of twelve and a maximum of fifteen members to the State Child and Maternal Death Review Team. The core members shall be (a) a physician employed by the department, who shall be a permanent member and shall serve as the chairperson of the team, (b) a senior staff member with child protective services of the department, (c) a forensic pathologist, (d) a law enforcement representative, (e) the Inspector General of Nebraska Child Welfare, and (f) an attorney. The remaining members appointed may be, but shall not be limited to, the following: A county attorney; a Federal Bureau of Investigation agent responsible for investigations on Native American reservations; a social worker; and members of organizations which represent hospitals or physicians. The department shall be responsible for the general administration of the activities of the team and shall employ or contract with a team coordinator to provide administrative support for the team.

(2) Members shall serve four-year terms with the exception of the chairperson. In the absence of the chairperson, the chief executive officer may appoint another member of the core team to serve as chairperson.

(3) The team shall not be considered a public body for purposes of the Open Meetings Act. The team shall meet a minimum of four times a year. Members of the team shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1993, LB 431, § 3; Laws 1996, LB 1044, § 648; Laws 1997, LB 307, § 187; Laws 1998, LB 1073, § 125; Laws 2003, LB 467, § 1; Laws 2004, LB 821, § 17; Laws 2007, LB296, § 563; Laws 2013, LB269, § 12; Laws 2013, LB361, § 3.

## Cross References

Open Meetings Act, see section 84-1407.

**71-3407 Team; purposes; duties.**

(1) The purposes of the team shall be to (a) develop an understanding of the causes and incidence of child or maternal deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child or maternal deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child or maternal deaths.

(2) The team shall:

(a) Undertake annual statistical studies of the causes and incidence of child or maternal 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, the pregnant or postpartum women, and their families prior to and subsequent to the child or maternal deaths;

(b) Develop a protocol for retrospective investigation of child or maternal deaths by the team;

(c) Develop a protocol for collection of data regarding child or maternal 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 or maternal deaths;

(f) Educate the public regarding the incidence and causes of child or maternal deaths, the public role in preventing child or maternal deaths, and specific steps the public can undertake to prevent child or maternal 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 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.

(3) The team may enter into consultation agreements with relevant experts to evaluate the information and records collected by the team. All of the confidentiality provisions of section 71-3411 shall apply to the activities of a consulting expert.

(4) The team may enter into agreements with a local public health department as defined in section 71-1626 to act as the agent of the team in conducting all information gathering and investigation necessary for the purposes of the Child and Maternal Death Review Act. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the agent.

**Source:** Laws 1993, LB 431, § 4; Laws 2012, LB782, § 116; Laws 2012, LB1160, § 18; Laws 2013, LB361, § 4.

**71-3408 Chairperson; team coordinator; duties.**

(1) The chairperson of the team shall:

- (a) Chair meetings of the team; and
- (b) Ensure identification of strategies to prevent child or maternal deaths.

(2) The team coordinator provided under subsection (1) of section 71-3406 shall:

- (a) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, educational records, and other relevant items made available to the team;
- (b) Ensure timely notification of the team members of an upcoming meeting;
- (c) Ensure that all team reporting and data-collection requirements are met;
- (d) Oversee adherence to the review process established by the Child and Maternal Death Review Act; and
- (e) Perform such other duties as the team deems appropriate.

**Source:** Laws 1993, LB 431, § 5; Laws 2013, LB361, § 5.

**71-3409 Review of child deaths; review of maternal deaths; manner.**

(1)(a) The team shall review all child deaths occurring on or after January 1, 1993, and before January 1, 2014, in three phases as provided in this subsection.

(b) Phase one shall be conducted by the core members. The core members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the Department of Health and Human Services. The core members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies. The core members may select cases from phase one for review in phase two.

(c) Phase two shall be completed by the core members and shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The core members may seek additional records described in section 71-3410. The core members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication. The core members may select cases from phase two for review by the team in phase three.

(d) Phase three shall be a review by the team of those cases selected by the core members for further discussion, review, and analysis.

(2)(a) The team shall review all child deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

(3)(a) The team shall review all maternal deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, coroner's report or autopsy report if done, and indicators of the woman's involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any maternal death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of domestic abuse, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

**Source:** Laws 1993, LB 431, § 6; Laws 1996, LB 1044, § 649; Laws 2013, LB361, § 6.

**71-3410 Provision of information and records; subpoenas.**

(1) Upon request, the team shall be immediately provided:

(a) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and

(b) All information and records maintained by any agency of state, county, or local government, any other political subdivision, any school district, or any public or private educational institution, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, educational records, parole and probation information and records, and information and records of any social services agency that provided services to the child, the pregnant or postpartum woman, or the family of the child or woman.

(2) The Department of Health and Human Services shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions (1)(a) and (b) of this section, except records and information on any child or maternal death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the team.

**Source:** Laws 1993, LB 431, § 7; Laws 1996, LB 1044, § 650; Laws 1998, LB 1073, § 126; Laws 2007, LB296, § 564; Laws 2013, LB361, § 7.

**71-3411 Information and records; confidentiality; release; conditions; disclosure; limitations.**

(1)(a) All information and records acquired by the team in the exercise of its purposes and duties pursuant to the Child and Maternal Death Review Act shall be confidential and exempt from disclosure and may only be disclosed as provided in this section and as provided in section 71-3407. Statistical compilations of data made by the team which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(b) De-identified information and records obtained by the team may be released to a researcher, upon proof of identity and qualifications of the researcher, if the researcher is employed by a research organization, university, institution, or government agency and is conducting scientific, medical, or public health research and if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for a written agreement with the Department of Health and Human Services providing protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(c) De-identified information and records obtained by the team may be released to the United States Public Health Service or its successor, a government health agency, or a local public health department as defined in section 71-1626 if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(2) Except as necessary to carry out a team's purposes and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of a team and persons attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of a team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or which is public information.

(4) Information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.

**Source:** Laws 1993, LB 431, § 8; Laws 2013, LB361, § 8.

## ARTICLE 35

## RADIATION CONTROL AND RADIOACTIVE WASTE

## (a) RADIATION CONTROL ACT

## Section

71-3503. Terms, defined.

71-3513.01. Repealed. Laws 2014, LB 659, § 1.

## (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.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

**71-3513.01 Repealed. Laws 2014, LB 659, § 1.**

**ARTICLE 39**

**INDOOR TANNING FACILITY ACT**

Section

- 71-3901. Act, how cited.
- 71-3902. Terms, defined.
- 71-3903. Legislative intent.
- 71-3904. Applicability of act.
- 71-3905. Operator, owner, or lessee; prohibited acts; signed statement required; when; consent; proof of age; duties.
- 71-3906. Operator, owner, or lessee; civil penalty.
- 71-3907. Operator, owner, or lessee; post warning sign; information.
- 71-3908. Operator, owner, or lessee; ensure compliance.
- 71-3909. Complaint; department; powers.

**71-3901 Act, how cited.**

Sections 71-3901 to 71-3909 shall be known and may be cited as the Indoor Tanning Facility Act.

**Source:** Laws 2014, LB132, § 1.

**71-3902 Terms, defined.**

For purposes of the Indoor Tanning Facility Act:

(1) Board means the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(2) Department means the Division of Public Health of the Department of Health and Human Services;

(3) Operator means a person designated by the tanning facility owner or tanning equipment lessee to operate, or to assist and instruct in the operation and use of, the tanning facility or tanning equipment;

(4) Tanning equipment means any device that emits electromagnetic radiation with wavelengths in the air between two hundred nanometers and four hundred nanometers and that is used for tanning of the skin. Tanning equipment includes, but is not limited to, a sunlamp, tanning booth, or tanning bed; and

(5) Tanning facility means a location, place, area, structure, or business that provides access to tanning equipment. Tanning facility includes, but is not limited to, any tanning business, salon, health club, apartment, or condominium, which has tanning equipment that is made available for public or commer-

cial use, regardless of whether a fee is charged for access to the tanning equipment.

**Source:** Laws 2014, LB132, § 2.

#### **71-3903 Legislative intent.**

It is the intent of the Legislature that the Indoor Tanning Facility Act be implemented and enforced in a manner that ensures equal treatment of all tanning facilities regardless of the type of business or facility or number of pieces of tanning equipment at the tanning facility.

**Source:** Laws 2014, LB132, § 3.

#### **71-3904 Applicability of act.**

The Indoor Tanning Facility Act does not apply to:

(1) A physician licensed under the Uniform Credentialing Act who uses, in the practice of medicine, medical diagnostic and therapeutic equipment that emits ultraviolet radiation; or

(2) Any individual who owns tanning equipment exclusively for personal, noncommercial use.

**Source:** Laws 2014, LB132, § 4.

#### **Cross References**

Uniform Credentialing Act, see section 38-101.

#### **71-3905 Operator, owner, or lessee; prohibited acts; signed statement required; when; consent; proof of age; duties.**

It shall be unlawful for an operator, an owner of a tanning facility, or a lessee of a tanning facility to allow any person less than sixteen years of age to use tanning equipment at the tanning facility unless the person is accompanied by a parent or legal guardian. Before each use of tanning equipment by any person less than sixteen years of age, the operator, owner, or lessee shall secure a statement signed at the tanning facility by the minor's parent or legal guardian stating that the person signing the statement is the minor's parent or legal guardian, that the parent or legal guardian has read and understood the warnings given by the tanning facility, that the parent or legal guardian consents to the minor's use of tanning equipment, and that the parent or legal guardian agrees that the minor will use protective eyewear while using the tanning equipment. The operator, owner, or lessee shall require proof of age from each person before allowing the person access to tanning equipment. For purposes of this section, proof of age shall include, but not be limited to, a driver's license or other government-issued identification containing the person's date of birth and photograph or digital image.

**Source:** Laws 2014, LB132, § 5.

#### **71-3906 Operator, owner, or lessee; civil penalty.**

Any operator, owner of a tanning facility, or lessee of a tanning facility who allows any person less than sixteen years of age to use tanning equipment at the tanning facility without being accompanied by the parent or legal guardian who signed the statement required under section 71-3905 shall be subject to a civil penalty of one hundred dollars to be imposed and collected by the department.

The department shall remit the civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2014, LB132, § 6.

**71-3907 Operator, owner, or lessee; post warning sign; information.**

(1) An operator, an owner of a tanning facility, or a lessee of a tanning facility shall post a warning sign in a conspicuous location in the tanning facility where it is readily visible by any person entering the tanning facility. The warning sign shall have black letters which are at least one-fourth inch in height.

(2) The warning sign shall include the following information:

**DANGER — Ultraviolet Radiation**

Follow instructions.

Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injuries and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

**WEAR PROTECTIVE EYEWEAR** — Failure to do so may result in severe burns or long-term injury to eyes.

Medicines or cosmetics can increase your sensitivity to ultraviolet radiation. Consult your physician before using sunlamps if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of tanning equipment.

It is unlawful for a tanning facility to allow a person under sixteen years of age to use tanning equipment without being accompanied by the person's parent or legal guardian.

Any person may report a violation of the Indoor Tanning Facility Act to the Department of Health and Human Services.

**Source:** Laws 2014, LB132, § 7.

**71-3908 Operator, owner, or lessee; ensure compliance.**

An operator, an owner of a tanning facility, or a lessee of a tanning facility shall ensure that the tanning facility complies with all applicable federal laws and regulations and the Indoor Tanning Facility Act.

**Source:** Laws 2014, LB132, § 8.

**71-3909 Complaint; department; powers.**

Upon receipt of a complaint regarding a tanning facility, the department, with the recommendation of the board, may inspect any tanning facility during the hours of operation of the tanning facility to ensure compliance with the Indoor Tanning Facility Act.

**Source:** Laws 2014, LB132, § 9.

**ARTICLE 40**

**TRANSACTIONS RELATING TO BLOOD AND HUMAN TISSUES**

Section

71-4002. Plasma donation; consent.



**71-4002 Plasma donation; consent.**

Any individual of sound mind and eighteen years of age or more may consent to donate plasma without the permission of a parent or guardian. The consent is not subject to later disaffirmance because of minority.

**Source:** Laws 2016, LB813, § 1.  
Effective date July 21, 2016.

**ARTICLE 41****DOWN SYNDROME DIAGNOSIS INFORMATION AND SUPPORT ACT**

## Section

- 71-4101. Act, how cited.  
71-4102. Terms, defined.  
71-4103. Information support sheet.  
71-4104. Department; duties; Down syndrome organization; include information on web site.

**71-4101 Act, how cited.**

Sections 71-4101 to 71-4104 shall be known and may be cited as the Down Syndrome Diagnosis Information and Support Act.

**Source:** Laws 2016, LB891, § 1.  
Effective date July 21, 2016.

**71-4102 Terms, defined.**

For purposes of the Down Syndrome Diagnosis Information and Support Act:

- (1) Department means the Division of Public Health of the Department of Health and Human Services;
- (2) Down syndrome means a chromosomal condition caused by cell division that results in the presence of an extra whole or partial copy of chromosome 21;
- (3) Down syndrome organization means any national, state, or local nonprofit organization primarily involved in providing advocacy, support, and education to individuals with Down syndrome and their parents;
- (4) Health care practitioner means any person who is credentialed under the Uniform Credentialing Act to provide health or medical care in the ordinary course of business or practice of a profession, including a genetic counselor; and
- (5) Parents means (a) expectant parents of a child who receive a test result from a prenatal screening or diagnostic test that indicates a high likelihood or the definite presence of Down syndrome, (b) parents of a child postnatally diagnosed with Down syndrome, and (c) a legal guardian of a child diagnosed with Down syndrome.

**Source:** Laws 2016, LB891, § 2.  
Effective date July 21, 2016.

**Cross References**

**Uniform Credentialing Act**, see section 38-101.

**71-4103 Information support sheet.**

A health care practitioner who provides prenatal or postnatal care, who administers or requests administration of a prenatal or postnatal screening or diagnostic test that detects Down syndrome, and who receives a test result from such test that indicates a high likelihood or the definite presence of Down syndrome shall deliver to the parents the information support sheet provided by the department under section 71-4104.

**Source:** Laws 2016, LB891, § 3.  
Effective date July 21, 2016.

**71-4104 Department; duties; Down syndrome organization; include information on web site.**

(1) The department shall make the following information available:

(a) Up-to-date information about Down syndrome that has been reviewed by medical experts and Down syndrome organizations. The information shall be provided in a written format and shall include the following:

(i) A clinical course description, including possible physical, developmental, educational, and psychosocial outcomes;

(ii) Treatment and therapy options; and

(iii) Life expectancy; and

(b) Contact information for Down syndrome organizations that are nonprofit and that provide information and support services for parents, including first-call programs and information hotlines specific to Down syndrome, resource centers or clearinghouses, and other education and support programs for Down syndrome.

(2) The department shall post the information required in subsection (1) of this section on its web site and shall include an information support sheet to be delivered by health care practitioners to parents as prescribed in section 71-4103.

(3) The department shall ensure that the information required in subsection (1) of this section is culturally and linguistically appropriate for parents.

(4) A Down syndrome organization may request that the department include the organization's informational material and contact information on the web site. The department may add the information to the web site upon request.

**Source:** Laws 2016, LB891, § 4.  
Effective date July 21, 2016.

## ARTICLE 42

### STROKE SYSTEM OF CARE ACT

#### Section

71-4201. Act, how cited.

71-4202. Legislative findings.

71-4203. Terms, defined.

71-4204. Designation of hospitals; department; duties.

71-4205. Coordinating stroke care agreement; contents.

71-4206. Plan for triage and transfer of acute stroke patients.

71-4207. Stroke triage assessment tool; post on web site.

71-4208. Emergency medical service; use of stroke triage assessment tool; establish protocols.

71-4209. Stroke system of care task force; duties.

**71-4201 Act, how cited.**

Sections 71-4201 to 71-4209 shall be known and may be cited as the Stroke System of Care Act.

**Source:** Laws 2016, LB722, § 1.  
Effective date July 21, 2016.

**71-4202 Legislative findings.**

The Legislature finds that:

(1) Stroke is the fifth leading cause of death and the leading cause of disability according to the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services;

(2) Forecasting by the American Heart Association predicts stroke prevalence to increase by twenty-four and nine-tenths percent between 2010 and 2030;

(3) The cost of stroke continues to increase as total hospital charges for stroke in Nebraska increased by more than fifty-four million dollars between 2001 and 2010, from fifty-four million dollars to one hundred eight million dollars, with the average charge per stroke hospitalization at thirty-one thousand dollars in 2010 according to the 2011 Nebraska Heart Disease and Stroke Prevention Program and Data Summary by the Nebraska Department of Health and Human Services;

(4) The rapid identification, diagnosis, and treatment of stroke can save the lives of stroke patients and in some cases reverse neurological damage such as paralysis and speech and language impairments;

(5) An effective system is needed in Nebraska communities in order to treat stroke patients in a timely manner and to improve the overall outcomes of stroke patients; and

(6) Creation and enhancement of stroke systems of care provide patients the highest quality care while ensuring seamless transitions along the care continuum.

**Source:** Laws 2016, LB722, § 2.  
Effective date July 21, 2016.

**71-4203 Terms, defined.**

For purposes of the Stroke System of Care Act:

(1) Department means the Department of Health and Human Services; and

(2) Hospital means a hospital as defined in section 71-419 and licensed under the Health Care Facility Licensure Act.

**Source:** Laws 2016, LB722, § 3.  
Effective date July 21, 2016.

**Cross References**

Health Care Facility Licensure Act, see section 71-401.

**71-4204 Designation of hospitals; department; duties.**

The department shall designate hospitals as comprehensive stroke centers, primary stroke centers, and acute stroke-ready hospitals based on certification

from the American Heart Association, the Joint Commission on Accreditation of Healthcare Organizations, or another nationally recognized, guidelines-based organization that provides certification for stroke care, as such certification existed on July 21, 2016. The department shall compile and maintain a list of such hospitals and post the list on the department's web site. Before June 1 of each year, the department shall send the list to the physician medical director of each emergency medical service licensed pursuant to the Emergency Medical Services Practice Act.

**Source:** Laws 2016, LB722, § 4.  
Effective date July 21, 2016.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**71-4205 Coordinating stroke care agreement; contents.**

A hospital that is designated as a comprehensive stroke center or a primary stroke center may enter into a coordinating stroke care agreement with an acute stroke-ready hospital to provide appropriate access to care for acute stroke patients. The agreement shall be in writing and shall include, at a minimum:

- (1) A transfer agreement for the transport and acceptance of any stroke patient seen by the acute stroke-ready hospital for stroke treatment therapies which the acute stroke-ready hospital is not capable of providing; and
- (2) Communication criteria and protocol with the acute stroke-ready hospital.

**Source:** Laws 2016, LB722, § 5.  
Effective date July 21, 2016.

**71-4206 Plan for triage and transfer of acute stroke patients.**

Beginning on January 1, 2017, a hospital that does not have certification described under section 71-4204 shall have a predetermined plan for the triage and transfer of acute stroke patients and shall file the plan annually with the department.

**Source:** Laws 2016, LB722, § 6.  
Effective date July 21, 2016.

**71-4207 Stroke triage assessment tool; post on web site.**

The department shall adopt and distribute a nationally recognized, standardized stroke triage assessment tool. The department shall post the stroke triage assessment tool on the department's web site and provide a copy of the assessment tool to each emergency medical service licensed pursuant to the Emergency Medical Services Practice Act.

**Source:** Laws 2016, LB722, § 7.  
Effective date July 21, 2016.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**71-4208 Emergency medical service; use of stroke triage assessment tool; establish protocols.**

(1) Beginning on January 1, 2017, an emergency medical service licensed pursuant to the Emergency Medical Services Practice Act shall use a stroke triage assessment tool that is substantially similar to the stroke triage assessment tool adopted by the department under section 71-4207.

(2) Beginning on January 1, 2017, a licensed emergency medical service shall establish pre-hospital-care protocols related to the assessment, treatment, and transport of a stroke patient by the emergency medical service.

**Source:** Laws 2016, LB722, § 8.  
Effective date July 21, 2016.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**71-4209 Stroke system of care task force; duties.**

(1) The department shall establish a stroke system of care task force to address matters of triage, treatment, and transport of possible acute stroke patients. The task force shall include representation from the department, including a program created by the department to address chronic disease prevention and control issues including cardiovascular health, the Emergency Medical Services Program created by the department, and the Office of Rural Health, the American Stroke Association, the Nebraska State Stroke Association, hospitals designated as comprehensive stroke centers under the Stroke System of Care Act, hospitals designated as primary stroke centers under the act, rural hospitals, physicians, and emergency medical services licensed pursuant to the Emergency Medical Services Practice Act.

(2) The task force shall provide advice and recommendations to the department regarding the implementation of the Stroke System of Care Act. The task force shall focus on serving both rural and urban areas. The task force shall provide advice regarding protocols for the assessment, stabilization, and appropriate routing of stroke patients by emergency medical services and for coordination and communication between hospitals, comprehensive stroke centers, primary stroke centers, and other support services necessary to assure all residents of Nebraska have access to effective and efficient stroke care.

(3) The task force shall recommend eligible essential health care services for acute stroke care provided through telehealth as defined in section 71-8503.

**Source:** Laws 2016, LB722, § 9.  
Effective date July 21, 2016.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**ARTICLE 46**

**MANUFACTURED HOMES, RECREATIONAL VEHICLES,  
AND MOBILE HOME PARKS**

**(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES**

**Section**

71-4603. Terms, defined.

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.

## Section

71-4609. Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.

## (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.

#### 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.

**71-4609 Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.**

(1) The commission shall administer the Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The commission may adopt and promulgate, amend, alter, or repeal general rules and regulations of procedure for (a) administering the provisions of the code, (b) issuing seals, (c) obtaining statistical data respecting the manufacture and sale of manufactured homes and recreational vehicles, and (d) prescribing means, methods, and practices to make effective such provisions.

(2) The commission shall refuse to issue a seal to any manufacturer or other person for any manufactured home or recreational vehicle found to be not in compliance with its standards governing body and frame design and construction or plumbing, heating, or electrical systems for manufactured homes or recreational vehicles or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer or other person may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal by the commission may be appealed, and the appeal shall be in accordance with section 75-136.

(3) The issuance of seals may be suspended or revoked as to any manufacturer or other person who has not complied with any provision of the code or with any rule, regulation, or standard adopted and promulgated under the code or who is convicted of violating section 71-4608, and issuance of the seals shall not be resumed until such manufacturer or other person submits sufficient proof that the conditions which caused the lack of compliance or the violation have been remedied. Any manufacturer or other person may request a hearing before the commission on the issue of such suspension or revocation. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension or revocation by the commission may be appealed, and the appeal shall be in accordance with section 75-136.

(4) The commission may conduct hearings and presentations of views consistent with the regulations adopted by the United States Department of Housing and Urban Development and adopt and promulgate such rules and regulations as are necessary to carry out this function.

(5) The commission shall establish a monitoring inspection fee in an amount approved by the United States Secretary of Housing and Urban Development, which fee shall be an amount paid to the commission by the manufacturer for each manufactured-home seal issued in the state. An additional monitoring inspection fee established by the United States Secretary of Housing and Urban

Development shall be paid by the manufacturer to the secretary who shall distribute the fees collected from all manufactured-home manufacturers based on provisions developed and approved by the secretary.

**Source:** Laws 1969, c. 557, § 9, p. 2274; Laws 1975, LB 300, § 21; Laws 1981, LB 545, § 25; Laws 1985, LB 313, § 13; Laws 1988, LB 352, § 134; Laws 1993, LB 536, § 91; Laws 1998, LB 1073, § 133; Laws 2002, LB 93, § 16; Laws 2013, LB545, § 3.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**ARTICLE 47**

**HEARING**

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

Section

71-4728. Commission; purpose; duties.

71-4732. Commission for the Deaf and Hard of Hearing Fund; created; use; investment.

(c) INFANT HEARING ACT

71-4741. Hearing screening; department; duties.

(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 and video remote interpreting providers under sections 20-150 to 20-159 and prepare and maintain a roster of licensed interpreters as defined in section 20-151. The roster shall include the type of employment the interpreter generally engages in, the type of license held, 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 and video remote interpreting providers;

(3) Promote the training of interpreters and video remote interpreting providers 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 services; and

(15) 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; Laws 2015, LB287, § 6.

#### 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.

**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.

## Section

- 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.
- 71-4835. Search and notification.
- 71-4836. Delivery of document of gift not required; right to examine.
- 71-4837. Rights and duties of procurement organization and others.
- 71-4838. Coordination of procurement and use.
- 71-4839. Sale or purchase of parts prohibited; penalty.
- 71-4840. Other prohibited acts; penalty.
- 71-4841. Immunity.
- 71-4842. Law governing validity; choice of law as to execution of document of gift; presumption of validity.
- 71-4843. Effect of anatomical gift on advance health care directive.
- 71-4844. Uniformity of application and construction.
- 71-4845. Relation to Electronic Signatures in Global and National Commerce Act.

## (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 30-2223; 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; Laws 2014, LB998, § 17.

#### 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

71-51,103. Nebraska Emergency Medical System Operations Fund; created; use; investment.

##### **(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND**

**71-51,103 Nebraska Emergency Medical System Operations Fund; created; use; investment.**

There is hereby created the Nebraska Emergency Medical System Operations Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Statewide Trauma System Act and the Emergency Medical Services Practice Act, including activities related to the design, maintenance, or enhancement of the statewide trauma system, support of emergency medical services programs, and support for the emergency medical services programs for children. 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; Laws 2013, LB222, § 28.

#### **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.

## (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.**

(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.

**Source:** Laws 1993, LB 152, § 4; Laws 1999, LB 241, § 2; Laws 2002, LB 1021, § 89; Laws 2012, LB782, § 120; Laws 2013, LB222, § 29.

## (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.



**71-5213 Repealed. Laws 2012, LB 782, § 253.****ARTICLE 53****DRINKING WATER**

## (a) NEBRASKA SAFE DRINKING WATER ACT

## Section

- 71-5301. Terms, defined.
- 71-5301.01. Use of lead-free materials; rules and regulations.
- 71-5304.01. Violations; administrative orders; director; emergency powers; hearing; administrative penalties.
- 71-5306. Director; powers and duties; Safe Drinking Water Act Cash Fund; created; use; investment.

## (b) DRINKING WATER STATE REVOLVING FUND ACT

- 71-5322. Department; powers and duties.
- 71-5326. Repealed. Laws 2011, LB 383, § 9.

## (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 means (a) not containing more than two-tenths percent lead when used with respect to solder and flux and (b) not containing more than a weighted average of twenty-five hundredths percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;

(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; Laws 2016, LB899, § 1. Effective date July 21, 2016.

**71-5301.01 Use of lead-free materials; rules and regulations.**

The director may adopt and promulgate rules and regulations regarding the use of lead-free materials in public water systems in compliance with standards established in accordance with 42 U.S.C. 300g, as such section existed on January 1, 2016.

**Source:** Laws 1988, LB 383, § 2; Laws 2001, LB 667, § 29; Laws 2016, LB899, § 2.  
Effective date July 21, 2016.

**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.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-5306 Director; powers and duties; Safe Drinking Water Act Cash Fund; created; use; investment.**

(1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services, Division of Public Health, Environmental Laboratory, or at any other certified laboratory which has entered into an agreement with the department therefor, and establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621;

(c) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(d) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(e) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(f) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the department may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(g) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2)(a) The director shall certify and enter into authorization agreements with laboratories to perform tests on water that is intended for human consumption, including the tests required by the director for compliance and monitoring purposes. The director shall establish, through rules and regulations, standards for certification. Such standards (i) may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results, (ii) shall provide for certification of independent laboratories to test samples provided by public water systems for all acute toxins for which the department tests such samples, including, but not limited to, coliform, nitrates, inorganic chemicals, organic chemicals, radionuclides, and any other acute toxins for which the department tests such samples, and (iii) shall be consistent with requirements for performing laboratory tests established by the United States Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees and fees for certifying other laboratories shall be established and collected to defray the cost of the inspections and certification as provided in sections 71-2619 to 71-2621.

(b) Laboratories shall be allowed to test water samples which are not compliance samples by testing methods other than the methods and procedures required to be used on compliance samples by rules and regulations of the department. For purposes of this section, compliance sample means a water sample required under the Nebraska Safe Drinking Water Act and rules and regulations of the department to determine whether a public water system meets current drinking water standards.

(3) All fees collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water Act. Any money in the fund available for investment shall be invested by the state

investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130; Laws 2007, LB296, § 615; Laws 2008, LB928, § 30; Laws 2016, LB19, § 1.  
Effective date July 21, 2016.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**(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.

**71-5326 Repealed. Laws 2011, LB 383, § 9.**

**ARTICLE 54**

**DRUG PRODUCT SELECTION**

Section

- 71-5401.01. Transferred to section 38-28,108.
- 71-5401.02. Transferred to section 38-28,109.
- 71-5402. Transferred to section 38-28,110.
- 71-5403. Transferred to section 38-28,111.
- 71-5404. Transferred to section 38-28,112.
- 71-5405. Transferred to section 38-28,113.
- 71-5406. Transferred to section 38-28,114.
- 71-5407. Transferred to section 38-28,115.
- 71-5409. Transferred to section 38-28,116.

**71-5401.01 Transferred to section 38-28,108.**

**71-5401.02 Transferred to section 38-28,109.**

**71-5402 Transferred to section 38-28,110.**

**71-5403 Transferred to section 38-28,111.**

**71-5404 Transferred to section 38-28,112.**

**71-5405 Transferred to section 38-28,113.**

**71-5406 Transferred to section 38-28,114.**

**71-5407 Transferred to section 38-28,115.**

**71-5409 Transferred to section 38-28,116.**

## **ARTICLE 56 RURAL HEALTH**

### (d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

Section

- 71-5650. Act, how cited.
- 71-5652. Purposes of act.
- 71-5653. Terms, defined.
- 71-5661. Financial incentives; funding; Rural Health Professional Incentive Fund; created; use; investment.
- 71-5662. Student loan; medical resident incentive; loan repayment; eligibility.
- 71-5663. Amount of financial assistance; limitation.
- 71-5666. Student loan recipient agreement; contents.
- 71-5667. Agreements under prior law; renegotiation.
- 71-5668. Loan repayment recipient agreement; contents.
- 71-5669.01. Medical resident incentive recipient; agreement; contents.

### (d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

**71-5650 Act, how cited.**

Sections 71-5650 to 71-5670 shall be known and may be cited as the Rural Health Systems and Professional Incentive Act.

**Source:** Laws 1991, LB 400, § 1; Laws 2015, LB196, § 1.

**71-5652 Purposes of act.**

The purposes of the Rural Health Systems and Professional Incentive Act are to (1) create the Nebraska Rural Health Advisory Commission and establish its powers and duties, (2) establish a student loan program that will provide financial incentives to medical, dental, master's level and doctorate-level mental health, and physician assistant students who agree to practice their profession in a designated health profession shortage area within Nebraska, (3) establish a loan repayment program that will provide financial incentives to medical residents who agree to practice their profession in a designated health profession shortage area within Nebraska, and (4) establish a loan repayment program that will require community matching funds and will provide financial incentives to eligible health professionals who agree to practice their profession in a designated health profession shortage area within Nebraska.

**Source:** Laws 1991, LB 400, § 3; Laws 1994, LB 1223, § 55; Laws 1996, LB 1155, § 47; Laws 2000, LB 1115, § 79; Laws 2004, LB 1005, § 100; Laws 2015, LB196, § 2.

**71-5653 Terms, defined.**

For purposes of the Rural Health Systems and Professional Incentive Act:

(1) Approved medical specialty means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry;

(2) Approved dental specialty means general practice, pediatric dentistry, and oral surgery;

(3) Approved mental health practice program means an approved educational program consisting of a master's or doctorate degree with the focus being primarily therapeutic mental health and meeting the educational requirements for licensure in mental health practice or psychology by the department;

(4) Commission means the Nebraska Rural Health Advisory Commission;

(5) Department means the Division of Public Health of the Department of Health and Human Services;

(6) Doctorate-level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a doctorate degree and meeting the educational requirements for licensure in psychology by the department;

(7) Full-time practice means a minimum of forty hours per week;

(8) Health care means both somatic and mental health care services;

(9) Master's level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a master's degree and meeting the educational requirements for licensure in mental health practice by the department;

(10) Office means the Office of Rural Health;

(11) Part-time practice means less than full-time practice but at least twenty hours per week;

(12) Qualified educational debts means government and commercial student-loan loans obtained by students for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the department, but does not include loans received under the act; and

(13) Rural means located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census.

**Source:** Laws 1991, LB 400, § 4; Laws 1992, LB 573, § 10; Laws 1994, LB 1223, § 56; Laws 1996, LB 1044, § 727; Laws 1996, LB 1155, § 48; Laws 1998, LB 1073, § 153; Laws 2000, LB 1115, § 80; Laws 2004, LB 1005, § 101; Laws 2005, LB 301, § 54; Laws 2007, LB296, § 625; Laws 2015, LB196, § 3.

**Note:** The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

**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, (b) the repayment of qualified educational debts owed by physicians in an approved medical specialty residency program in Nebraska as determined pursuant to section 71-5662, and (c) the repayment of qualified educational

debts owed by eligible health professionals as determined pursuant to section 71-5662. 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, 71-5668, and 71-5669.01 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; Laws 2015, LB196, § 4.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **71-5662 Student loan; medical resident incentive; loan repayment; eligibility.**

(1) To be eligible for a student loan under the Rural Health Systems and Professional Incentive Act, an applicant or a recipient shall be enrolled or accepted for enrollment in an accredited medical or dental education program or physician assistant education program or an approved mental health practice program in Nebraska.

(2) To be eligible for the medical resident incentive under the act, an applicant or a recipient shall be enrolled or accepted for enrollment in an approved medical specialty residency program in Nebraska.

(3) To be eligible for loan repayment under the act, an applicant or a recipient shall be a pharmacist, a dentist, a physical therapist, an occupational therapist, a mental health practitioner, a psychologist licensed under the requirements of section 38-3114 or the equivalent thereof, a nurse practitioner, a physician assistant, or a physician in an approved specialty and shall be licensed to practice in Nebraska, not be enrolled in a residency program, not be practicing under a provisional or temporary license, and enter practice in a designated health profession shortage area in Nebraska.

**Source:** Laws 1991, LB 400, § 13; Laws 1994, LB 1223, § 59; Laws 1996, LB 1155, § 51; Laws 1997, LB 577, § 2; Laws 2000, LB 1115, § 81; Laws 2004, LB 1005, § 104; Laws 2007, LB463, § 1234; Laws 2008, LB797, § 19; Laws 2015, LB196, § 5.

### **71-5663 Amount of financial assistance; limitation.**

(1) The amount of financial assistance provided through student loans pursuant to the Rural Health Systems and Professional Incentive Act shall be limited to thirty thousand dollars for each recipient for each academic year and shall not exceed one hundred twenty thousand dollars per medical, dental, or doctorate-level mental health student or thirty thousand dollars per master's level mental health or physician assistant student.

(2) The amount of financial assistance provided through the medical resident incentive program pursuant to the act shall be limited to forty thousand dollars for each recipient for each year of residency and shall not exceed one hundred twenty thousand dollars.

(3) The amount of financial assistance provided by the state through loan repayments pursuant to the act (a) for physicians, dentists, and psychologists shall be limited to thirty thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed ninety thousand dollars per recipient and (b) for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners shall be limited to fifteen thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed forty-five thousand dollars per recipient.

**Source:** Laws 1991, LB 400, § 14; Laws 1994, LB 1223, § 60; Laws 1997, LB 577, § 3; Laws 2000, LB 1115, § 82; Laws 2004, LB 1005, § 105; Laws 2006, LB 962, § 2; Laws 2008, LB797, § 20; Laws 2015, LB196, § 6.

#### **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 any period required for completion of training 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. Part-time practice in a shortage area shall result in a prorated reduction in the cancellation of the 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, does not practice the profession for which the loan was given, discontinues practice of the profession for which the loan was given, 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) Any practice or payment obligation incurred by the student loan recipient under the student loan program is canceled in the event of the student loan recipient's total and permanent disability or death.

**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; Laws 2015, LB196, § 7.

#### **71-5667 Agreements under prior law; renegotiation.**

Agreements executed prior to July 1, 2007, under 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; Laws 2015, LB196, § 8.

**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 thirty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to fifteen 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;

(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 fifty percent of the total amount of funds provided to the recipient for loan repayment with interest at a rate of eight percent simple interest per year from the date of default. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds which shall not be more than the local entity's share paid to the loan repayment recipient; and

(4) Any practice or payment obligation incurred by the loan repayment recipient under the loan repayment program is canceled in the event of the loan repayment recipient's total and permanent disability or death.

**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; Laws 2015, LB196, § 9.

#### **71-5669.01 Medical resident incentive recipient; agreement; contents.**

Each medical resident incentive recipient shall execute an agreement with the department. 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 medical resident incentive recipient agrees to practice an approved medical specialty the equivalent of one year of full-time practice in a designated health profession shortage area and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the medical resident incentive recipient, the State of Nebraska will provide funding for the repayment of the recipient's qualified educational debts, in amounts up to forty thousand dollars per year for up to three years while in an approved medical specialty residency program in Nebraska. The department shall make payments directly to the medical resident incentive recipient;

(3) If the medical resident incentive recipient extends his or her residency training but not in an approved specialty, 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, does not practice the profession for which the loan was given, discontinues practice of the profession for which the loan was given, or practices outside Nebraska, the medical resident incentive recipient shall repay to the state 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 or discontinuation of an approved specialty residency training in Nebraska and shall be completed within a period not to exceed twice the number of years for which the medical resident incentive recipient received awards; and

(4) Any practice or payment obligation incurred by the medical resident incentive recipient under the medical resident incentive program is canceled in the event of the medical resident incentive recipient's total and permanent disability or death.

**Source:** Laws 2015, LB196, § 10.

**ARTICLE 57**  
**SMOKING AND TOBACCO**

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

Section

71-5714. Tobacco Prevention and Control Program; created.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5716. Act, how cited.

71-5717. Purpose of act.

71-5730. Exemptions; legislative findings; legislative intent.

71-5735. Tobacco retail outlet; sign required; waiver signed by employee; form; owner; duties.

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

**71-5714 Tobacco Prevention and Control Program; created.**

The Tobacco Prevention and Control Program is created as a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services. The program 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.

The State Treasurer shall transfer, on July 1, 2016, the unobligated balance in the Tobacco Prevention and Control Cash Fund to the Nebraska Health Care 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; Laws 2016, LB957, § 5.  
Effective date March 31, 2016.

(d) NEBRASKA CLEAN INDOOR AIR ACT

**71-5716 Act, how cited.**

Sections 71-5716 to 71-5735 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

**Source:** Laws 2008, LB395, § 1; Laws 2015, LB118, § 8.

**71-5717 Purpose of act.**

The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment with limited exceptions for guestrooms and suites, research, tobacco retail outlets, and cigar shops. The limited exceptions permit smoking in public places where the public would reasonably expect to find persons smok-

ing, including guestrooms and suites which are subject to expectations of privacy like private residences, institutions engaged in research related to smoking, and tobacco retail outlets and cigar shops which provide the public legal retail outlets to sample, use, and purchase tobacco products and products related to smoking. The act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The act shall be liberally construed to further its purpose.

**Source:** Laws 2008, LB395, § 2; Laws 2015, LB118, § 9.

**71-5730 Exemptions; legislative findings; legislative intent.**

(1) The following indoor areas are exempt from section 71-5729:

(a) Guestrooms and suites that are rented to guests and that 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;

(b) 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;

(c) Tobacco retail outlets; and

(d) Cigar shops as defined in section 53-103.08.

(2)(a) The Legislature finds that allowing smoking in tobacco retail outlets as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke since the general public does not frequent tobacco retail outlets and should reasonably expect that there would be second-hand smoke in tobacco retail outlets and could choose to avoid such exposure. The products that tobacco retail outlets sell are legal for customers who meet the age requirement. Customers should be able to try them within the tobacco retail outlet, especially given the way that tobacco customization may occur in how tobacco is blended and cigars are produced. The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(b) It is the intent of the Legislature to allow cigar and pipe smoking in tobacco retail outlets that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

(3)(a) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke. This exception poses a de minimis restriction on the public and employees given the limited number of cigar shops compared

to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(b) The Legislature finds that (i) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (ii) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(c) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(d) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

**Source:** Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82; Laws 2015, LB118, § 10.

**71-5735 Tobacco retail outlet; sign required; waiver signed by employee; form; owner; duties.**

(1) The owner of a tobacco retail outlet shall post a sign on all entrances to the tobacco retail outlet, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

(2) Beginning November 1, 2015, the owner shall provide to the Division of Public Health a copy of a waiver signed prior to employment by each employee on a form prescribed by the division. The waiver shall expressly notify the employee that he or she will be exposed to second-hand smoke, and the employee shall acknowledge that he or she understands the risks of exposure to second-hand smoke.

(3) The owner shall not allow cigarette smoking in the tobacco retail outlet.

**Source:** Laws 2015, LB118, § 11.

## ARTICLE 58

### HEALTH CARE; CERTIFICATE OF NEED

#### Section

71-5803.09. Intermediate care facility, intermediate care facility for persons with developmental disabilities, defined.

71-5829.03. Certificate of need; activities requiring.

71-5829.04. Long-term care beds; moratorium; exceptions; department; duties.

#### **71-5803.09 Intermediate care facility, intermediate care facility for persons with developmental disabilities, defined.**

Intermediate care facility has the same meaning as in section 71-420 and includes an intermediate care facility for persons with developmental disabilities that has sixteen or more beds. Intermediate care facility for persons with developmental disabilities has the same meaning as in section 71-421.

**Source:** Laws 1979, LB 172, § 19; Laws 1988, LB 1100, § 174; R.S.1943, (1996), § 71-5819; Laws 1997, LB 798, § 13; Laws 2000, LB 819, § 116; Laws 2009, LB511, § 1; Laws 2013, LB23, § 36.

#### **71-5829.03 Certificate of need; activities requiring.**

Except as provided in section 71-5830.01, no person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivisions (4) and (5) of this section;

(2) An increase in the long-term care beds of a health care facility by more than ten long-term care beds or more than ten percent of the total long-term care bed capacity of such facility, whichever is less, over a two-year period;

(3) An increase in the rehabilitation beds of a health care facility by more than ten rehabilitation beds or more than ten percent of the total rehabilitation bed capacity of such facility, whichever is less, over a two-year period;

(4) Any initial establishment of long-term care beds through conversion by a hospital of any type of hospital beds to long-term care beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period;

(5) Any initial establishment of rehabilitation beds through conversion by a hospital of any type of hospital beds to rehabilitation beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period; or

(6) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility, except that no certificate of need is

required for relocation or transfer of rehabilitation beds from a health care facility to another health care facility owned and operated by the same entity.

**Source:** Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1; Laws 2009, LB195, § 84; Laws 2013, LB487, § 1.

**71-5829.04 Long-term care beds; moratorium; exceptions; department; duties.**

(1) All long-term care beds which require a certificate of need under section 71-5829.03 are subject to a moratorium unless one of the following exceptions applies:

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a twenty-five-mile radius of the proposed site has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five-mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application unless the department determines that all long-term care beds in a licensed facility located in a city of the second class or village have been sold or transferred to another facility or facilities located outside of the twenty-five-mile radius of the city or village resulting in no licensed long-term care beds within the corporate limits of the city of the second class or village. In such case, the department shall waive the certificate of need limitations of this subdivision for development and licensure of a long-term care facility by a political subdivision or a nonprofit organization in such a city of the second class or village if the political subdivision or nonprofit organization agrees not to sell long-term care beds licensed under such waiver or increase the number of long-term care beds as allowed under subdivision (2) of section 71-5829.03 until five years have passed after such beds are first occupied. The number of licensed long-term care beds in the facility shall be limited to the number of long-term care beds sold or transferred as described in this subdivision.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

(a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;



(b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;

(c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and

(d) The minimum occupancy rate is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate is ninety percent.

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

**Source:** Laws 1997, LB 798, § 23; Laws 2009, LB195, § 85; Laws 2013, LB344, § 1.

## 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 60**

**NURSING HOMES**

(b) NEBRASKA NURSING HOME ACT

Section

71-6018.01. Nursing facility; nursing requirements; waiver; procedure.

(c) TRAINING REQUIREMENTS

71-6039. Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect.

71-6039.01. Paid dining assistant; qualifications.

71-6039.05. Paid dining assistant; nursing home; duties.

(b) NEBRASKA NURSING HOME ACT

**71-6018.01 Nursing facility; nursing requirements; waiver; procedure.**

(1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive either the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social

Security Act, as amended, use the services of a licensed registered nurse for at least eight consecutive hours per day, seven days per week, or the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

(a)(i) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

(ii) The department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility or hospital; and

(iii) The department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

(b) The department has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (a)(ii) and (iii) of this subsection have been met.

(3) The department shall apply for such a waiver from the federal government to carry out subdivision (1)(b) of this section.

(4) A waiver granted under this section shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel. The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(5) The department shall provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or an intellectual disability. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident.

**Source:** Laws 2000, LB 819, § 126; Laws 2007, LB296, § 639; Laws 2013, LB23, § 37.

### (c) TRAINING REQUIREMENTS

**71-6039 Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect.**

(1) No person shall act as a nursing assistant in a nursing home unless such person:

(a) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(b) Is able to speak and understand the English language or a language understood by a substantial portion of the nursing home residents; and

(c) Has successfully completed a basic course of training approved by the department for nursing assistants within one hundred twenty days of initial employment in the capacity of a nursing assistant at any nursing home.

(2)(a) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not act as a nursing assistant in a nursing home.

(b) If a person registered as a nursing assistant becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nursing assistant becomes null and void as of the date of licensure.

(c) A person listed on the Nurse Aide Registry with respect to whom a finding of conviction has been placed on the registry may petition the department to have such finding removed at any time after one year has elapsed since the date such finding was placed on the registry.

(3) The department may prescribe a curriculum for training nursing assistants and may adopt and promulgate rules and regulations for such courses of training. The content of the courses of training and competency evaluation programs shall be consistent with federal requirements unless exempted. The department may approve courses of training if such courses of training meet the requirements of this section. Such courses of training shall include instruction on the responsibility of each nursing assistant to report suspected abuse or neglect pursuant to sections 28-372 and 28-711. Nursing homes may carry out approved courses of training within the nursing home, except that nursing homes may not conduct the competency evaluation part of the program. The prescribed training shall be administered by a licensed registered nurse.

(4) For nursing assistants at intermediate care facilities for persons with developmental disabilities, such courses of training shall be no less than twenty hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training, and for nursing assistants at all nursing homes other than intermediate care facilities for persons with developmental disabilities, such courses shall be no less than seventy-five hours in duration.

(5) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

**Source:** Laws 1983, LB 273, § 2; Laws 1984, LB 416, § 11; Laws 1986, LB 921, § 11; Laws 1988, LB 463, § 49; Laws 1990, LB 1080, § 7; Laws 1994, LB 1210, § 149; Laws 2004, LB 1005, § 111; Laws 2007, LB185, § 43; Laws 2007, LB463, § 1236; Laws 2013, LB23, § 38.

#### **71-6039.01 Paid dining assistant; qualifications.**

No person shall act as a paid dining assistant in a nursing home unless such person:

(1) Is at least sixteen years of age;

(2) Is able to speak and understand the English language or a language understood by the nursing home resident being fed by such person;

(3) Has successfully completed at least eight hours of training as prescribed by the department for paid dining assistants;

(4) Has no adverse findings on the Nurse Aide Registry or the Adult Protective Services Central Registry; and

(5) Has no adverse findings on the central registry created in section 28-718 if the nursing home which employs such person as a paid dining assistant has at any one time more than one resident under the age of nineteen years.

**Source:** Laws 2004, LB 1005, § 115; Laws 2014, LB853, § 47.

#### **71-6039.05 Paid dining assistant; nursing home; duties.**

Each nursing home shall maintain (1) a record of all paid dining assistants employed by such facility, (2) verification of successful completion of a training course for each paid dining assistant, and (3) verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central registry created in section 28-718, if applicable under section 71-6039.01, with respect to each paid dining assistant.

**Source:** Laws 2004, LB 1005, § 119; Laws 2014, LB853, § 48.

### **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.
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71-6207.02.	Directed review, defined.
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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.
71-6223.02.	Directed review; initiation; procedure; report.
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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **71-6207.02 Directed review, defined.**

Directed review shall mean a review conducted pursuant to section 71-6223.02 in which (1) there is no applicant group or application, (2) the duty of the committee is to formulate an initial proposal on the issues subject to review, and (3) the duty of the board and the director is to evaluate the proposal using the appropriate criteria and to make recommendations to the Legislature.

**Source:** Laws 1993, LB 536, § 105; Laws 2015, LB90, § 1.

#### **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.

#### **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.



**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

#### **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.

#### **71-6223.02 Directed review; initiation; procedure; report.**

At any time the director and the chairperson may initiate a directed review or the chairperson in consultation with the members of the Health and Human Services Committee of the Legislature may initiate a directed review. The purpose of a directed review is to determine the advisability of credentialing a health professional group not previously regulated, of changing the scope of practice of a regulated health profession, or of other issues regarding the regulation of health professions. Before initiating a directed review, the director and the chairperson, or the chairperson in consultation with the Health and Human Services Committee, shall determine that no appropriate applicant group exists. No letter of intent, applicant group, application, or application fee shall be required in a directed review. The duty of the technical committee in a directed review shall be to investigate the issues that are the subject of the

review, to hold a public hearing to receive information from the public on the issues, to develop a specific proposal to address the issues investigated taking into account the appropriate criteria as set forth in section 71-6221, and to prepare a final report containing the technical committee's proposal, other options considered, and other relevant information.

**Source:** Laws 1993, LB 536, § 106; Laws 2015, LB90, § 2.

**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.

**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.

**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.

**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. County, city, or village; building code; adopt; amend; enforce; copy; fees.

**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), chapter 13 of the 2009 edition, and all but such chapter of the 2012 edition, published by the International Code Council;



(b) The International Residential Code (IRC), chapter 11 of the 2009 edition, and all but such chapter of the 2012 edition except section R313, published by the International Code Council; and

(c) The International Existing Building Code, 2012 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; Laws 2015, LB540, § 1.

**71-6404 State building code; applicability.**

(1) For purposes of the Building Construction Act, component means a portion of the state building code adopted by reference pursuant to section 71-6403.

(2) The state building code shall be the building and construction standard within the state and shall be applicable:

(a) To all buildings and structures owned by the state or any state agency; and

(b) In each county, city, or village 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; Laws 2016, LB704, § 213.  
Effective date July 21, 2016.

**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.

**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 County, city, or village; building code; adopt; amend; enforce; copy; fees.**

(1) Any county, city, or village may enact, administer, or enforce a local building or construction code if or as long as such county, city, or village:

(a) Adopts the state building code; or

(b) Adopts a building or construction code that conforms generally with the state building code.

(2) A building or construction code shall be deemed to conform generally with the state building code if it:

(a) Adopts a special or differing building standard by amending, modifying, or deleting any portion of the state building code in order to reduce unnecessary costs of construction, increase safety, durability, or efficiency, establish best building or construction practices within the county, city, or village, or address special local conditions within the county, city, or village;

(b) Adopts any supplement, new edition, appendix, or component or combination of components of the state building code;

(c) Adopts chapter 13 of the 2012 edition of the International Building Code, chapter 11 of the 2012 edition of the International Residential Code, or section R313 of the 2012 edition of the International Residential Code;

(d) Adopts a plumbing code, an electrical code, a fire prevention code, or any other standard code as authorized under section 14-419, 15-905, 18-132, or 23-172; or

(e) Adopts a lighting and thermal efficiency ordinance, resolution, code, or standard as authorized under section 81-1618.

(3) A local building or construction code which includes a prior edition of any component or combination of components of the state building code shall not be deemed to conform generally with the state building code.

(4) A county, city, or village shall not adopt or enforce a local building or construction code other than as provided by this section.

(5) A county, city, or village which adopts or enforces a local building or construction code under this section 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 or a code that conforms generally with the state building code is adopted by the county, city, or village within two years after an update to the state building code.

(6) A county, city, or village may adopt 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.

(7) A county, city, or village which adopts one or more standard codes as part of its local building or construction code under this section shall keep at least one copy of each adopted code, or portion thereof, for use and examination by the public in the office of the clerk of the county, city, or village prior to the adoption of the code and as long as such code is in effect.

(8) Notwithstanding the provisions of the Building Construction Act, a public building of any political subdivision shall be built in accordance with the applicable 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 county, city, or village doing the monitoring.

**Source:** Laws 1987, LB 227, § 6; Laws 1993, LB 319, § 4; Laws 2010, LB799, § 4; Laws 2011, LB546, § 3; Laws 2015, LB540, § 2; Laws 2016, LB704, § 214.  
Effective date July 21, 2016.

**ARTICLE 65**  
**IN-HOME PERSONAL SERVICES**

Section

71-6502. In-home personal services worker; qualifications.

**71-6502 In-home personal services worker; qualifications.**

An in-home personal services worker:

- (1) Shall be at least eighteen years of age;
- (2) Shall have good moral character;

(3) Shall not have been convicted of a crime under the laws of Nebraska or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which crime is rationally related to the person’s fitness or capacity to act as an in-home personal services worker;

(4) Shall have no adverse findings on the Adult Protective Services Central Registry, the central registry created in section 28-718, the Medication Aide Registry, the Nurse Aide Registry, or the central registry maintained by the sex offender registration and community notification division of the Nebraska State Patrol pursuant to section 29-4004;

(5) Shall be able to speak and understand the English language or the language of the person for whom he or she is providing in-home personal services; and

(6) Shall have training sufficient to provide the requisite level of in-home personal services offered.

**Source:** Laws 2007, LB236, § 40; Laws 2014, LB853, § 49.

**Cross References**

**Adult Protective Services Act**, see section 28-348.

**Medication Aide Act**, see section 71-6718.

**ARTICLE 67**  
**MEDICATION REGULATION**

(b) MEDICATION AIDE ACT

Section

71-6721. Terms, defined.

71-6725. Minimum standards for competencies.

71-6727. Medication Aide Registry; contents.

71-6736. Alleged incompetence; reports required; confidential; immunity.

(b) MEDICATION AIDE ACT

**71-6721 Terms, defined.**

For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under the Child Care Licensing Act;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means a health care facility or health care service as defined in section 71-413 or 71-415 or an entity or person certified by the department to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for persons with developmental disabilities has the definition found in section 71-421;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the department;

(16) Nonprescription drug has the definition found in section 38-2829;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-422, 71-424, and 71-429;

(18) Prescription drug has the definition of prescription drug or device as found in section 38-2841;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

**Source:** Laws 1998, LB 1354, § 11; Laws 2000, LB 819, § 138; Laws 2001, LB 398, § 81; Laws 2004, LB 1005, § 132; Laws 2007, LB296, § 663; Laws 2007, LB463, § 1286; Laws 2013, LB23, § 39.

Cross References

Child Care Licensing Act, see section 71-1908.

**71-6725 Minimum standards for competencies.**

(1) The minimum competencies for a medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall include (a) maintaining confidentiality, (b) complying with a recipient’s right to refuse to take medication, (c) maintaining hygiene and current accepted standards for infection control, (d) documenting accurately and completely, (e) providing medications according to the five rights, (f) having the ability to understand and follow instructions, (g) practicing safety in application of medication procedures, (h) complying with limitations and conditions under which a medication aide may provide medications, and (i) having an awareness of abuse and neglect reporting requirements and any other areas as shall be determined by rules or regulations.

(2) The Department of Health and Human Services shall adopt and promulgate rules and regulations setting minimum standards for competencies listed in subsection (1) of this section and methods for competency assessment of medication aides. The Department of Health and Human Services shall adopt and promulgate rules and regulations setting methods for competency assessment of the person licensed to operate a child care facility or staff of child care facilities. The State Department of Education shall adopt and promulgate rules and regulations setting methods for competency assessment of the school staff member.

(3) A medication aide, except one who is employed by a nursing home, an intermediate care facility for persons with developmental disabilities, or an assisted-living facility, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section 71-406, a nursing home, or an intermediate care facility for persons with developmental disabilities shall be required to have completed a

forty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section, except that a medication aide who has, prior to January 1, 2003, completed a twenty-hour course and passed an examination developed and administered by the Department of Health and Human Services may complete a second twenty-hour course supplemental to the first twenty-hour course in lieu of completing the forty-hour course. The department shall adopt and promulgate rules and regulations regarding the procedures and criteria for curriculum. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a passing standard for the examination shall be established in rules and regulations.

(5) Medication aides providing services in nursing homes or intermediate care facilities for persons with developmental disabilities shall also meet the requirements set forth in section 71-6039.

**Source:** Laws 1998, LB 1354, § 15; Laws 2000, LB 819, § 139; Laws 2002, LB 1021, § 103; Laws 2007, LB296, § 665; Laws 2013, LB23, § 40.

#### **71-6727 Medication Aide Registry; contents.**

(1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-6730.

(2) The registry shall contain the following information on each individual who meets the conditions in section 71-6726: (a) The individual's full name; (b) information necessary to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for persons with developmental disabilities, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

**Source:** Laws 1998, LB 1354, § 17; Laws 2007, LB463, § 1288; Laws 2013, LB23, § 41.

#### **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**

Section

- 71-6901. Terms, defined.
- 71-6902. Performance of abortion; notarized written consent required.
- 71-6902.01. Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.
- 71-6902.02. Coercion to obtain abortion; prohibited; denial of financial support; effect.
- 71-6903. Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.
- 71-6904. Appeal; procedure; confidentiality.
- 71-6905. Court proceedings; no fees or costs required.
- 71-6906. Performance of abortion; consent not required; when.
- 71-6907. Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.
- 71-6908. Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.
- 71-6909. Physician; report; contents; form; compilation by department.
- 71-6910. Sections; how construed; intent.
- 71-6911. Declaration; confidentiality.

**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

- 71-7436. Emergency medical reasons, defined.
- 71-7444. Wholesale drug distribution, defined.
- 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.

**71-7436 Emergency medical reasons, defined.**

(1) Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (a) Holders of pharmacy licenses, (b) health care practitioner facilities as defined in section 71-414, and (c) hospitals as defined in section 71-419.

(2) Emergency medical reasons does not include regular and systematic sales to practitioners as defined in section 38-2838 of prescription drugs that will be used for routine office procedures.

**Source:** Laws 1992, LB 1019, § 9; Laws 1998, LB 1073, § 157; Laws 2001, LB 398, § 82; R.S.1943, (2003), § 71-7409; Laws 2006, LB 994, § 10; Laws 2007, LB463, § 1294; Laws 2015, LB37, § 89.

**71-7444 Wholesale drug distribution, defined.**

(1) Wholesale drug distribution means the distribution of prescription drugs to a person other than a consumer or patient.

(2) Wholesale drug distribution does not include:

(a) Intracompany sales of prescription drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control;

(b) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, a state, a political subdivision, or any other

governmental agency to a nonprofit affiliate of the organization, to the extent otherwise permitted by law;

(c) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities operating under common ownership or common control;

(d) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons or for a practitioner to use for routine office procedures, not to exceed five percent of sales as provided in section 71-7454;

(e) The sale, purchase, or trade of, an offer to sell, purchase, or trade, or the dispensing of a prescription drug pursuant to a prescription;

(f) The distribution of drug samples by representatives of a manufacturer or of a wholesale drug distributor;

(g) The sale, purchase, or trade of blood and blood components intended for transfusion; or

(h) The delivery of or the offer to deliver a prescription drug by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs.

**Source:** Laws 1992, LB 1019, § 12; Laws 1995, LB 574, § 60; R.S.1943, (2003), § 71-7412; Laws 2006, LB 994, § 18; Laws 2015, LB37, § 90.

#### **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 (10) 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; Laws 2015, LB37, § 91.

**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.

#### **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) sixty million three hundred thousand dollars on or before July 15, 2014, (b) sixty million three hundred fifty thousand dollars on or before July 15, 2015, (c) sixty million three hundred fifty thousand dollars on or before July 15, 2016, (d) sixty million three hundred fifty thousand dollars on or before July 15, 2017, (e) sixty million three hundred fifty thousand dollars on or before July

15, 2018, and (f) sixty million one hundred thousand dollars on or before every July 15 thereafter 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. The Nebraska Health Care Cash Fund shall also include money received pursuant to section 77-2602. Except as otherwise provided by law, no more than the amounts 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.

(4) The State Treasurer shall transfer fifty thousand dollars on or before July 15, 2016, from the Nebraska Health Care Cash Fund to the Board of Regents of the University of Nebraska for the University of Nebraska Medical Center. It is the intent of the Legislature that these funds be used by the College of Public Health for workforce training.

**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; Laws 2013, LB199, § 29; Laws 2014, LB906, § 18; Laws 2015, LB390, § 12; Laws 2015, LB661, § 32.

#### 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

71-8201.	Act, how cited.
71-8203.	Definitions, where found.
71-8204.	Advanced level rehabilitation center, defined.
71-8206.	Transferred to section 71-8220.01.
71-8212.	Designated rehabilitation centers, defined.
71-8215.	Emergency medical service, defined.
71-8217.	General level rehabilitation center, defined.

## Section

- 71-8220.01. Intermediate level rehabilitation center, defined.  
71-8229. Rehabilitative services, defined.  
71-8230. Specialty level burn or pediatric trauma center, defined.  
71-8240. Department; statewide duties.  
71-8244. Designated center; requirements; request; appeal; revocation or suspension; notice; hearing.  
71-8245. Onsite reviews; applicant; duties; confidentiality; fees.  
71-8248. Statewide trauma registry.

**71-8201 Act, how cited.**

Sections 71-8201 to 71-8253 shall be known and may be cited as the Statewide Trauma System Act.

**Source:** Laws 1997, LB 626, § 1; Laws 2015, LB46, § 1.

**71-8203 Definitions, where found.**

For purposes of the Statewide Trauma System Act, the definitions found in sections 71-8204 to 71-8235 apply.

**Source:** Laws 1997, LB 626, § 3; Laws 2015, LB46, § 2.

**71-8204 Advanced level rehabilitation center, defined.**

Advanced level rehabilitation center means a rehabilitation center which, in addition to the services provided at intermediate level and general level rehabilitation centers, provides services to patients with traumatic brain or spinal injuries, complicated amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity, and serves as a referral facility for intermediate level and general level rehabilitative services.

**Source:** Laws 1997, LB 626, § 4; Laws 2015, LB46, § 3.

**71-8206 Transferred to section 71-8220.01.****71-8212 Designated rehabilitation centers, defined.**

Designated rehabilitation centers means advanced, intermediate, or general level rehabilitation centers.

**Source:** Laws 1997, LB 626, § 12; Laws 2015, LB46, § 4.

**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.

**71-8217 General level rehabilitation center, defined.**

General level rehabilitation center means a rehabilitation center which provides services to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in one or more functional areas, with minimum to moderate impairment or complexity.

**Source:** Laws 1997, LB 626, § 17; Laws 2015, LB46, § 5.

**71-8220.01 Intermediate level rehabilitation center, defined.**

Intermediate level rehabilitation center means a rehabilitation center which provides rehabilitative services to individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in one or more functional areas, with moderate to severe impairment or complexity.

**Source:** Laws 1997, LB 626, § 6; R.S.1943, (2009), § 71-8206; Laws 2015, LB46, § 6.

**71-8229 Rehabilitative services, defined.**

Rehabilitative services means a system or collection of comprehensive medical and therapy services that are interdisciplinary, coordinated, and resource-intensive with the goal of restoring physical, cognitive, psychological, social, and vocational functioning so that an individual can return to home, work, or society, becoming a productive participant in his or her community.

**Source:** Laws 1997, LB 626, § 29; Laws 2015, LB46, § 7.

**71-8230 Specialty level burn or pediatric trauma center, defined.**

Specialty level burn or pediatric trauma center means a trauma center that (1) provides specialized care in the areas of burns or pediatrics, (2) provides continuous accessibility regardless of day, season, or patient's ability to pay, and (3) has entry access from each of the designation levels as its online physician or qualified physician surrogate deems appropriate.

**Source:** Laws 1997, LB 626, § 30; Laws 2009, LB195, § 95; Laws 2015, LB46, § 8.

**71-8240 Department; statewide duties.**

The department shall establish and maintain the following on a statewide basis:

- (1) Trauma system objectives and priorities;
- (2) Minimum trauma standards for facilities, equipment, and personnel for advanced, basic, comprehensive, and general level trauma centers and specialty level burn or pediatric trauma centers;
- (3) Minimum standards for facilities, equipment, and personnel for advanced, intermediate, and general level rehabilitation centers;
- (4) Minimum trauma standards for the development of facility patient care protocols;
- (5) Trauma care regions as provided for in section 71-8250;
- (6) Recommendations for an effective trauma transportation system;
- (7) The minimum number of hospitals and health care facilities in the state and within each trauma care region that may provide designated trauma care services based upon approved regional trauma plans;
- (8) The minimum number of prehospital or out-of-hospital care providers in the state and within each trauma care region that may provide trauma care services based upon approved regional trauma plans;
- (9) A format for submission of the regional trauma plans to the department;

(10) A program for emergency medical services and trauma care research and development;

(11) Review and approve regional trauma plans;

(12) The initial designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the approved regional trauma plan; and

(13) The trauma implementation plan incorporating the regional trauma plans.

**Source:** Laws 1997, LB 626, § 40; Laws 2009, LB195, § 101; Laws 2015, LB46, § 9.

**71-8244 Designated center; requirements; request; appeal; revocation or suspension; notice; hearing.**

(1) Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center that desires to be a designated center shall request designation from the department whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide trauma system. The department shall determine by rule and regulation the manner and form of such requests.

(2) Upon receiving a request, the department shall review the request to determine whether there is compliance with standards for the trauma care level for which designation is desired or whether the appropriate verification or accreditation documentation has been submitted. Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center which submits verification or accreditation documentation from a recognized independent verification or accreditation body or public agency with standards that are at least as stringent as those of the State of Nebraska for the trauma care level for which designation is desired as determined by the State Trauma Advisory Board shall be designated by the department and shall be included in the trauma system or plan established under the Statewide Trauma System Act. Any medical facility that is currently verified or accredited shall be designated by the department at the corresponding level of designation for the same time period in Nebraska without the necessity of an onsite review by the department.

(3) Any medical facility applying for designation may appeal its designation. The appeal shall be in accordance with the Administrative Procedure Act.

(4) Except as otherwise provided in subsection (2) of this section, designation is valid for a period of four years and is renewable upon receipt of a request from the medical facility for renewal prior to expiration.

(5) Regional trauma advisory boards shall be notified promptly of designated medical facilities in their region so they may incorporate them into the regional plan.

(6) The department may revoke or suspend a designation if it determines that the medical facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional trauma advisory board of designation suspensions and revocations. Any rehabilitation or trauma

center the designation of which has been revoked or suspended may request a hearing to review the action of the department.

**Source:** Laws 1997, LB 626, § 44; Laws 2009, LB195, § 104; Laws 2015, LB46, § 10.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-8245 Onsite reviews; applicant; duties; confidentiality; fees.**

(1) As part of the process to designate and renew the designation of hospitals and health care facilities as advanced, basic, comprehensive, or general level trauma centers, the department may contract for onsite reviews of such hospitals and health care facilities to determine compliance with required standards. As part of the process to designate a health care facility as a general, an intermediate, or an advanced level rehabilitation center or a specialty level burn or pediatric trauma center, the applicant shall submit to the department documentation of current verification or accreditation.

(2) Members of onsite review teams and staff included in onsite visits shall not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department:

(a) In actions arising out of the designation of a hospital or health care facility pursuant to section 71-8244;

(b) In actions arising out of the revocation or suspension of a designation under such section; or

(c) In actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider, subject to any further restrictions on disclosure that may apply.

(3) Information that identifies an individual patient shall not be publicly disclosed without the patient's consent.

(4) When a medical facility requests designation for more than one service, the department may coordinate the joint consideration of such requests. Composition and qualification of the designation team shall be set forth in rules and regulations adopted under the Statewide Trauma System Act. Reports prepared pursuant to this section shall not be considered public records.

(5) The department may establish fees to defray the costs of carrying out onsite reviews required by this section, but such fees shall not be assessed to health care facilities designated as basic or general level trauma centers.

(6) This section does not restrict the authority of a hospital or a health care provider to provide services which it has been authorized to provide by state law.

**Source:** Laws 1997, LB 626, § 45; Laws 2009, LB195, § 105; Laws 2015, LB46, § 11.

**71-8248 Statewide trauma registry.**

The department shall establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the



availability and delivery of prehospital or out-of-hospital care and hospital trauma care services. Specific data elements of the registry shall be defined by rule and regulation of the department. Every health care facility designated as an advanced, a basic, a comprehensive, or a general level trauma center, a specialty level burn or pediatric trauma center, an advanced, an intermediate, or a general level rehabilitation center, or a prehospital or out-of-hospital provider shall furnish data to the registry. All other hospitals may furnish trauma data as required by the department by rule and regulation. All hospitals involved in the care of a trauma patient shall have unrestricted access to all prehospital reports for the trauma registry for that specific trauma occurrence.

**Source:** Laws 1997, LB 626, § 48; Laws 2009, LB195, § 108; Laws 2015, LB46, § 12.

### 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.

### 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 85

### TELEHEALTH SERVICES

#### (a) NEBRASKA TELEHEALTH ACT

##### Section

71-8503. Terms, defined.

71-8506. Medical assistance program; reimbursement; requirements.

71-8508. Rules and regulations.

#### (b) CHILDREN'S BEHAVIORAL HEALTH

71-8509. Telehealth services for children's behavioral health; rules and regulations; terms, defined.

71-8510. Behavioral health screenings; legislative intent; optional screening.

71-8511. Behavioral Health Education Center; duties.

71-8512. Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section.

#### (a) NEBRASKA TELEHEALTH ACT

##### **71-8503 Terms, defined.**

For purposes of the Nebraska Telehealth Act:

(1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved

by a health care practitioner at another site for medical evaluation, and telemonitoring;

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth; and

(5) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage.

**Source:** Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695; Laws 2014, LB1076, § 1.

#### **71-8506 Medical assistance program; reimbursement; requirements.**

(1) In-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation, and the rate shall not depend on the distance between the health care practitioner and the patient.

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant. Such rates shall include reimbursement for all two-way, real-time, interactive communications, unless provided by an Internet service provider, between the patient and the physician or health care practitioner at the distant site which comply with the federal Health Insurance Portability and Accountability Act of 1996 and rules and regulations adopted thereunder and with regulations relating to encryption adopted by the federal Centers for Medicare and Medicaid Services and which satisfy federal requirements relating to efficiency, economy, and quality of care.

**Source:** Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82; Laws 2013, LB556, § 6; Laws 2014, LB1076, § 2.

#### **Cross References**

**Medical Assistance Act**, see section 68-901.

#### **71-8508 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish necessary methods and procedures.

**Source:** Laws 1999, LB 559, § 8; Laws 2014, LB1076, § 3.

(b) CHILDREN'S BEHAVIORAL HEALTH

**71-8509 Telehealth services for children's behavioral health; rules and regulations; terms, defined.**

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations providing for telehealth services for children's behavioral health. Such rules and regulations relate specifically to children's behavioral health and are in addition to the Nebraska Telehealth Act.

For purposes of sections 71-8509 to 71-8512, child means a person under nineteen years of age.

(2) The rules and regulations required pursuant to subsection (1) of this section shall include, but not be limited to:

(a) An appropriately trained staff member or employee familiar with the child's treatment plan or familiar with the child shall be immediately available in person to the child receiving a telehealth behavioral health service in order to attend to any urgent situation or emergency that may occur during provision of such service. This requirement may be waived by the child's parent or legal guardian;

(b) In cases in which there is a threat that the child may harm himself or herself or others, before an initial telehealth service the health care practitioner shall work with the child and his or her parent or guardian to develop a safety plan. Such plan shall document actions the child, the health care practitioner, and the parent or guardian will take in the event of an emergency or urgent situation occurring during or after the telehealth session. Such plan may include having a staff member or employee familiar with the child's treatment plan immediately available in person to the child, if such measures are deemed necessary by the team developing the safety plan; and

(c) Services provided by means of telecommunications technology, other than telehealth behavioral health services received by a child, are not covered if the child has access to a comparable service within thirty miles of his or her place of residence.

**Source:** Laws 2013, LB556, § 1.

**Cross References**

Nebraska Telehealth Act, see section 71-8501.

**71-8510 Behavioral health screenings; legislative intent; optional screening.**

It is the intent of the Legislature that behavioral health screenings be offered by physicians at the time of childhood physicals. The physician shall explain that such screening is optional. The results of behavioral health screenings and any related documents shall not be included in the child's school record and shall not be provided to the child's school or to any other person or entity without the express consent of the child's parent or legal guardian.

**Source:** Laws 2013, LB556, § 2.

**71-8511 Behavioral Health Education Center; duties.**

The Behavioral Health Education Center created pursuant to section 71-830 shall provide education and training for educators on children's behavioral health in the areas of the state served by the Behavioral Health Screening and Referral Pilot Program created pursuant to section 71-8512.

**Source:** Laws 2013, LB556, § 3.

**71-8512 Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section.**

(1) The University of Nebraska Medical Center shall create the Behavioral Health Screening and Referral Pilot Program. The pilot program shall utilize a strategy of screening and behavioral health intervention in coordination with the regional behavioral health authorities established pursuant to section 71-808 in which the clinics identified under subsection (2) of this section are located. It is the intent of the Legislature that the pilot program demonstrate a method of addressing the unmet emotional or behavioral health needs of children that can be replicated statewide. Under the pilot program, behavioral health screening will be offered: (a) In primary care providers' offices during examinations under the early and periodic screening, diagnosis, and treatment services program pursuant to 42 U.S.C. 1396d(r), as such section existed on January 1, 2013; or (b) upon request from parents or legal guardians who have concerns about a child's behavioral health.

(2) Three clinics shall be selected to serve as sites for the pilot program, including at least one rural and one urban clinic. Selected clinics shall have child psychologists integrated in the pediatric practice of the clinics. Parents or legal guardians of children participating in the pilot program shall be offered routine mental and behavioral health screening for their child during required physical examinations or at the request of a parent or legal guardian. Behavioral health screening shall be administered by clinic staff and interpreted by the psychiatrist, psychiatric nurse practitioner, psychologist, or licensed mental health practitioner and the child's primary care physician.

(3) Children identified through such screenings as being at risk may be referred for further evaluation and diagnosis as indicated. If intervention is required, the primary care medical team, including the psychologist and the primary care physician, shall develop a treatment plan collaboratively with the parent or legal guardian and any other individuals identified by the parent or legal guardian. If appropriate, the child shall receive behavioral therapy, medication, or combination therapy within the primary care practice setting.

(4) Consultation via telephone or telehealth with faculty and staff of the departments of Child and Adolescent Psychiatry, Psychiatric Nursing, and Developmental Pediatrics, and the Munroe-Meyer Institute Psychology Department, of the University of Nebraska Medical Center shall be available to the primary care practice and the children as needed to manage the care of children with mental or behavioral health issues that require more specialized care than can be provided by the primary care practice.

(5) Data on the pilot program shall be collected and evaluated by the Interdisciplinary Center for Program Evaluation at the Munroe-Meyer Institute of the University of Nebraska Medical Center. Evaluation of the pilot program shall include, but not be limited to:

(a) The number of referrals for behavioral health screening under the pilot program;

(b) Whether each referral is initiated by a parent, a school, or a physician;

(c) The number of children and adolescents recommended for further psychological assessment after screening for a possible behavioral health disorder;

(d) The number and type of further psychological assessments of children and adolescents recommended and conducted;

(e) The number and type of behavioral health disorders in children and adolescents diagnosed as a result of a further psychological assessment following a behavioral health screening under the pilot program;

(f) The number and types of referrals of children and adolescents for behavioral health treatment from primary care medical practitioners;

(g) The number of children and adolescents successfully treated for a behavioral health disorder based upon patient reports, parent ratings, and academic records;

(h) The number and type of referrals of children and adolescents to psychiatric backup services at the University of Nebraska Medical Center;

(i) The number of children and adolescents diagnosed with a behavioral health disorder who are successfully managed or treated through psychiatric backup services from the University of Nebraska Medical Center;

(j) The number and types of medications, consultations, or prescriptions ordered by psychiatric nurse practitioners for children and adolescents;

(k) The number of referrals of children and adolescents for severe behavioral health disorders and consultations to child psychiatrists, developmental pediatricians, or psychologists specializing in treatment of adolescents;

(l) The number of children and adolescents referred to psychiatric hospitals or emergency departments of acute care hospitals for treatment for dangerous or suicidal behavior;

(m) The number of children and adolescents prescribed psychotropic medications and the types of such psychotropic medications; and

(n) Data collection on program costs and financial impact as related to capacity for replication in other primary care practices. Primary program costs include physician and psychologist time for conducting screenings, family interviews, further testing, and specialist consulting costs relating to consulting services by psychiatric nurses, developmental pediatricians, and psychologists. Treatment or medications paid by private insurance, the medical assistance program, or the State Children's Health Insurance Program shall not be included in program costs pursuant to this subdivision.

(6) This section terminates two years after September 6, 2015.

**Source:** Laws 2013, LB556, § 4; Laws 2015, LB240, § 1.

## 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.

**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.

**ARTICLE 88**

**STEM CELL RESEARCH ACT**

Section

71-8804. Committee; establish grant process; reports.

71-8805. Stem Cell Research Program; created.

**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.

**71-8805 Stem Cell Research Program; created.**

(1) The Stem Cell Research Program is created.

(2) Any money appropriated by the Legislature for the Stem Cell Research Program 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 any annual appropriation for the Stem Cell Research Program 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.

(4) The State Treasurer shall transfer, on July 1, 2016, the unobligated balance in the Stem Cell Research Cash Fund to the Nebraska Health Care Cash Fund.

**Source:** Laws 2008, LB606, § 5; Laws 2009, LB316, § 20; Laws 2012, LB969, § 10; Laws 2016, LB957, § 6.  
Effective date March 31, 2016.

## 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;

(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; and

(c) Establish a return to learn protocol for students that have sustained a concussion. The return to learn protocol shall recognize that students who have sustained a concussion and returned to school may need informal or formal accommodations, modifications of curriculum, and monitoring by medical or academic staff until the student is fully recovered.

(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; Laws 2014, LB923, § 5.

**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.

**ARTICLE 92**  
**HEALTH CARE TRANSPARENCY ACT**



## Section

- 71-9202. Health Care Data Base Advisory Committee; Nebraska Health Care Data Base.
- 71-9203. Health Care Data Base Advisory Committee; members.
- 71-9204. Health Care Data Base Advisory Committee; duties; Director of Insurance; report.

**71-9201 Act, how cited.**

Sections 71-9201 to 71-9204 shall be known and may be cited as the Health Care Transparency Act.

**Source:** Laws 2014, LB76, § 1.

**71-9202 Health Care Data Base Advisory Committee; Nebraska Health Care Data Base.**

The Director of Insurance shall appoint the Health Care Data Base Advisory Committee to make recommendations regarding the creation and implementation of the Nebraska Health Care Data Base which shall provide a tool for objective analysis of health care costs and quality, promote transparency for health care consumers, and facilitate the reporting of health care and health quality data. The Nebraska Health Care Data Base shall be used to:

- (1) Provide information to consumers and purchasers of health care;
- (2) Determine the capacity and distribution of existing health care resources;
- (3) Identify health care needs and inform health care policy;
- (4) Evaluate the effectiveness of intervention programs on improving patient outcomes;
- (5) Review costs among various treatment settings, providers, and approaches; and
- (6) Improve the quality and affordability of patient health care and health care coverage.

**Source:** Laws 2014, LB76, § 2.

**71-9203 Health Care Data Base Advisory Committee; members.**

(1) The Health Care Data Base Advisory Committee shall be appointed within forty-five business days after February 14, 2014.

(2) The advisory committee members appointed by the Director of Insurance shall include, but not be limited to:

- (a) A member of academia with experience in health care data and cost efficiency research;
- (b) At least one representative of hospitals;
- (c) At least one representative of physicians;
- (d) At least one other representative of health care providers;
- (e) A representative of small employers that purchase group health insurance for employees, which representative is not an insurer or insurance producer;
- (f) A representative of large employers that purchase health insurance for employees, which representative is not an insurer or insurance producer;
- (g) At least one health care consumer advocate, knowledgeable about private market insurance, public health insurance programs, enrollment and access, or

related areas and has background or experience in consumer health care advocacy;

(h) At least one representative of health insurers;

(i) A representative of organizations that facilitate health information exchange to improve health care for all Nebraskans; and

(j) At least one representative of local public health departments.

(3) The following shall serve as ex officio members of the advisory committee:

(a) The Director of Insurance or his or her designee;

(b) The Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee; and

(c) The Director of Public Health of the Division of Public Health of the Department of Health and Human Services or his or her designee.

(4) The members of the advisory committee appointed pursuant to subsection (2) of this section shall serve without compensation and shall not be reimbursed for expenses incurred in the performance of their duties on the committee.

**Source:** Laws 2014, LB76, § 3.

**71-9204 Health Care Data Base Advisory Committee; duties; Director of Insurance; report.**

(1) The Health Care Data Base Advisory Committee shall make recommendations to the Director of Insurance regarding the Nebraska Health Care Data Base that:

(a) Include specific strategies to measure and collect data related to health care safety and quality, utilization, health outcomes, and cost;

(b) Focus on data elements that foster quality improvement and peer group comparisons;

(c) Facilitate value-based, cost-effective purchasing of health care services by public and private purchasers and consumers;

(d) Result in usable and comparable information that allows public and private health care purchasers, consumers, and data analysts to identify and compare health plans, health insurers, health care facilities, and health care providers regarding the provision of safe, cost-effective, high-quality health care services;

(e) Use and build upon existing data collection standards, reporting requirements, and methods to establish and maintain the data base in a cost-effective and efficient manner;

(f) Incorporate and utilize claims, eligibility, and other publicly available data to the extent it is the most cost-effective method of collecting data to minimize the cost and administrative burden on data sources;

(g) Include discussions regarding the standardization of the Nebraska Health Care Data Base with other states and regions and federal efforts concerning all-payer claims data bases;

(h) Include discussions regarding the integration of data collection requirements of the health insurance exchange as required by the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law

111-152, and any amendments thereto or regulations or guidance issued under those acts;

(i) Include discussions regarding a limit on the number of times the Nebraska Health Care Data Base may require submission of the required data elements;

(j) Include discussions regarding a limit on the number of times the data base may change the required data elements for submission in a calendar year considering administrative costs, resources, and time required to fulfill the requests;

(k) Include discussions regarding compliance with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and other proprietary information related to collection and release of data;

(l) Discuss issues surrounding the availability of the data for research and other purposes; and

(m) Include whether the advisory committee should continue to exist and provide recommendations to the Department of Insurance regarding the Nebraska Health Care Data Base after the report required in subsection (2) of this section is completed.

(2) On or before December 15, 2014, the Director of Insurance shall report to the Governor and the Legislature the recommendations of the advisory committee.

**Source:** Laws 2014, LB76, § 4.

## ARTICLE 93

### HOME CARE CONSUMER BILL OF RIGHTS ACT

#### Section

71-9301. Act, how cited.

71-9302. Terms, defined.

71-9303. Minor child; incapacitated person; representation; assistance in securing rights.

71-9304. Rights.

71-9305. Attorney General; enforcement; powers; civil action; civil penalty; damages.

71-9306. Civil action.

#### **71-9301 Act, how cited.**

Sections 71-9301 to 71-9306 shall be known and may be cited as the Home Care Consumer Bill of Rights Act.

**Source:** Laws 2016, LB698, § 1.

Operative date July 21, 2016.

#### **71-9302 Terms, defined.**

For purposes of the Home Care Consumer Bill of Rights Act:

(1) Home care consumer means any person who receives home care services and who is (a) sixty years of age or older or (b) a person with disabilities and is younger than sixty years of age. Home care consumer shall also include the parent or guardian of the home care consumer when the consumer is a minor child;

(2) Home care services means home and community-based services the purposes of which are to promote independence and reduce the necessity for

residence in a long-term care facility, including, but not limited to, personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed, and which are provided under the medicare program under Title XVIII of the federal Social Security Act, as amended, the medicaid program under Title XIX of the federal Social Security Act, as amended, or any other public or private program providing home care services; and

(3) Provider of home care services means a public or private organization that provides home care services or arranges for the provision of home care services by an independent contractor.

**Source:** Laws 2016, LB698, § 2.

Operative date July 21, 2016.

**71-9303 Minor child; incapacitated person; representation; assistance in securing rights.**

(1) A home care consumer who is a minor child shall be represented by his or her parent or guardian. Such parent or guardian shall act on behalf of the minor child in securing the minor child's rights under the Home Care Consumer Bill of Rights Act.

(2) A home care consumer who has been found by a court to be an incapacitated person shall be represented by a guardian. Such guardian shall act on behalf of the incapacitated person in securing the incapacitated person's rights under the Home Care Consumer Bill of Rights Act.

(3) A home care consumer or an incapacitated person who is not a minor child has the right to the assistance of an agent, an attorney, an individual designated pursuant to a power of attorney, or an individual otherwise designated in writing by the home care consumer to act on behalf of the home care consumer in securing his or her rights under the act.

**Source:** Laws 2016, LB698, § 3.

Operative date July 21, 2016.

**71-9304 Rights.**

In addition to any other rights recognized under state or federal law, a home care consumer has the following rights:

(1) The right to confidentiality of all personal, financial, and medical information which is disclosed to a provider of home care services. A home care consumer also has the right of access to his or her own records and all written information from those records;

(2) The right to receive disclosure from the provider of home care services in writing and in plain language (a) whether the provider of home care services is an employer, a joint employer, an employee leasing company, or a contractor, as applicable, and (b) that the home care consumer (i) may be considered an employer under law and, if the home care consumer is so considered, may be held responsible for the payment of federal and state taxes, including, but not limited to, federal and state income taxes, taxes under the Federal Insurance Contributions Act for purposes of social security and medicare, contributions under the Federal Unemployment Tax Act and the Employment Security Law, payment of overtime pay and minimum wage, workers' compensation insurance, and any other applicable payments required under state or federal law

and (ii) should consult a tax professional if the home care consumer is uncertain about his or her responsibility for such payments;

(3) The right to be informed of the home care consumer's rights under the Home Care Consumer Bill of Rights Act by a provider of home care services prior to receiving home care services. The provider of home care services shall provide a copy of the rights guaranteed by the Home Care Consumer Bill of Rights Act in the format accessible to the consumer which may include paper, electronic, audio, large print, or braille;

(4) The right to be informed of the contact information for the entities the home care consumer may contact if the home care consumer's rights are violated, including the Consumer Protection Division of the Office of the Attorney General, in order to have grievances addressed in an appropriate and timely manner and without retaliation;

(5) The right to participate in the planning of his or her home care services, including, but not limited to, the right to make choices about aspects of the home care services that are important to him or her, choosing providers and schedules to the extent practicable, receiving reasonable accommodation of his or her needs and preferences, and involving anyone he or she chooses to participate with him or her in that planning;

(6) The right to receive sufficient information to make informed decisions, to be fully informed in advance about any proposed changes in home care services, and to be involved in the decisionmaking process regarding those changes;

(7) The right to refuse home care services;

(8) The right to be informed of the cost of home care services prior to receiving those services, whether the cost of home care services is covered under health insurance, long-term care insurance, or other private or public programs, and any charges the home care consumer will be expected to pay for such home care services. A home care consumer has the right to thirty days' advance notice of any changes to such costs or services;

(9) The right to receive care and services provided in a way that promotes his or her dignity and individuality; and

(10) The right to (a) express grievances about the quality of the home care services, the number of hours of home care services, and any violations of the home care consumer's rights under the Home Care Consumer Bill of Rights Act and (b) assert the rights under the act without retaliation.

**Source:** Laws 2016, LB698, § 4.

Operative date July 21, 2016.

#### Cross References

Employment Security Law, see section 48-601.

**71-9305 Attorney General; enforcement; powers; civil action; civil penalty; damages.**

(1) When the Attorney General has cause to believe that any provider of home care services is violating the Home Care Consumer Bill of Rights Act, the Attorney General may enforce the act.

(2) For purposes of the act, the Attorney General may:

(a) Require a provider of home care services to file a statement or report in writing under oath or otherwise as to all facts and circumstances concerning the provision of home care services to the home care consumer;

(b) Examine under oath any person in connection with the provision of home care services;

(c) Examine any property or sample thereof, record, book, document, account, or paper as the Attorney General deems necessary; and

(d) Issue subpoenas to require the attendance of witnesses or the production of documents.

(3) The Attorney General may bring a civil action in the district court of any county in which a violation occurred, or in Lancaster County, seeking injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation.

(4) The Attorney General may also seek and recover actual damages for each health care consumer injured by a violation of the act.

**Source:** Laws 2016, LB698, § 5.

Operative date July 21, 2016.

#### **71-9306 Civil action.**

Any home care consumer who suffers a loss or harm as a result of a violation of the Home Care Consumer Bill of Rights Act may file a civil action to recover actual damages, attorney's fees, court costs, and any other remedies provided by law.

**Source:** Laws 2016, LB698, § 6.

Operative date July 21, 2016.

## **ARTICLE 94**

### **ASSISTING CAREGIVER TRANSITIONS ACT**

#### Section

71-9401. Act, how cited.

71-9402. Terms, defined.

71-9403. Designation of caregiver; hospital; duties.

71-9404. Designation of caregiver; record; contents; effect of designation.

71-9405. Notification of discharge or transfer.

71-9406. Discharge plan; contents; instructions concerning aftercare tasks; documentation.

71-9407. Assisting Caregiver Transitions Act; effect.

71-9408. Rules and regulations.

#### **71-9401 Act, how cited.**

Sections 71-9401 to 71-9408 shall be known and may be cited as the Assisting Caregiver Transitions Act.

**Source:** Laws 2016, LB698, § 7.

Operative date July 21, 2016.

#### **71-9402 Terms, defined.**

For purposes of the Assisting Caregiver Transitions Act:

(1) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administration of medication, and similar activities;



(2) Aftercare means assistance provided by a caregiver to a patient in the patient's residence after the patient's discharge from a hospital following an inpatient stay and may include, but is not limited to, (a) assisting with activities of daily living and (b) carrying out medical or nursing tasks, including, but not limited to, managing wound care, assisting in administration of medication, and operating medical equipment;

(3) Caregiver means a person nineteen years of age or older who is designated by a patient or a patient's legal guardian to provide aftercare;

(4) Hospital means a general acute hospital as defined in section 71-412; and

(5) Residence means the home in which a patient resides. Residence does not include an assisted-living facility as defined in section 71-406, a group home, a hospital as defined in section 71-419, an intermediate care facility as defined in section 71-420, a rehabilitation hospital as defined in section 71-427 or other rehabilitation facility, a nursing facility as defined in section 71-424, or a skilled nursing facility as defined in section 71-429.

**Source:** Laws 2016, LB698, § 8.

Operative date July 21, 2016.

#### **71-9403 Designation of caregiver; hospital; duties.**

(1) A hospital shall give each patient or patient's legal guardian the opportunity to designate at least one caregiver as soon as practicable and prior to the patient's release.

(2) If a patient is unconscious or incapacitated upon his or her admission to the hospital, the hospital shall give the patient or the patient's legal guardian the opportunity to designate a caregiver as soon as possible after the patient's recovery of consciousness or capacity.

(3) A patient or his or her legal guardian is not required to designate a caregiver at any time. If a patient or a patient's legal guardian declines to designate a caregiver, the hospital shall document this fact in the patient's medical record.

**Source:** Laws 2016, LB698, § 9.

Operative date July 21, 2016.

#### **71-9404 Designation of caregiver; record; contents; effect of designation.**

(1) If a patient or a patient's legal guardian designates a caregiver, the hospital shall record in the patient's medical record the designated caregiver's name, his or her relationship to the patient, and the caregiver's telephone number, residence address, and other contact information.

(2) A patient or a patient's legal guardian may change the caregiver designation at any time. The hospital shall document the change in the patient's medical record before the patient's discharge.

(3) A person designated as a caregiver is not obligated to accept such designation or to perform aftercare for the designating patient or patient's legal guardian.

**Source:** Laws 2016, LB698, § 10.

Operative date July 21, 2016.

#### **71-9405 Notification of discharge or transfer.**

If a patient or a patient's legal guardian designates a caregiver, the hospital shall notify the caregiver of the patient's discharge from the hospital or transfer to another facility as soon as practicable which may be after the patient's physician issues a discharge or transfer order. If the hospital is unable to contact the caregiver, such lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient or the medically appropriate discharge or transfer of the patient. The hospital shall document all attempts to contact the caregiver in the patient's medical record.

**Source:** Laws 2016, LB698, § 11.  
Operative date July 21, 2016.

**71-9406 Discharge plan; contents; instructions concerning aftercare tasks; documentation.**

(1) As soon as possible after designation of a caregiver and prior to the patient's discharge, the hospital shall attempt to consult with the patient or the patient's legal guardian and the caregiver and shall issue a discharge plan that describes the patient's aftercare needs. The discharge plan shall include, but need not be limited to:

(a) The name and contact information of the caregiver, as provided by him or her; and

(b) A description of the aftercare tasks necessary to maintain the patient's ability to reside in his or her residence.

(2) The hospital shall provide the caregiver with instructions concerning all aftercare tasks described in the discharge plan. The instructions shall include, but need not be limited to:

(a) A live demonstration of or instruction in the aftercare tasks, as performed by a hospital employee or other authorized individual in a culturally competent manner;

(b) An opportunity for the caregiver and the patient or the patient's guardian to ask questions about aftercare; and

(c) Answers to the caregiver's, patient's, and patient's legal guardian's questions in a culturally competent manner.

(3) The hospital shall document the instructions in the patient's medical record, including the date, time, and contents of the instructions and whether the caregiver accepted or refused the offer of instruction.

**Source:** Laws 2016, LB698, § 12.  
Operative date July 21, 2016.

**71-9407 Assisting Caregiver Transitions Act; effect.**

The Assisting Caregiver Transitions Act does not:

(1) Create a private right of action against a hospital, a hospital employee, or a person with whom the hospital has a contractual relationship;

(2) Create additional civil or regulatory liability for a hospital, a hospital employee, or a person with whom the hospital has a contractual relationship;

(3) Supersede or replace existing rights or remedies under any other law;

(4) Affect a license issued to a hospital pursuant to the Health Care Facility Licensure Act;

(5) Establish a new requirement to reimburse or otherwise pay for services rendered by a caregiver for aftercare; or

(6) Interfere with an individual acting under a valid power of attorney for health care as defined in section 30-3402 or acting as a conservator as defined in section 30-2209.

**Source:** Laws 2016, LB698, § 13.  
Operative date July 21, 2016.

#### Cross References

Health Care Facility Licensure Act, see section 71-401.

### 71-9408 Rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the Assisting Caregiver Transitions Act.

**Source:** Laws 2016, LB698, § 14.  
Operative date July 21, 2016.

## ARTICLE 95

### DIRECT PRIMARY CARE AGREEMENT ACT

#### Section

- 71-9501. Act, how cited.
- 71-9502. Legislative intent; purpose of act.
- 71-9503. Terms, defined.
- 71-9504. Direct agreement; requirements; notice; copy to direct patient.
- 71-9505. Direct provider; provide written disclaimer; notice; contents.
- 71-9506. Direct provider; limitation on activities; duty.
- 71-9507. Direct agreement; not insurance; certificate of authority or license not required; billing limitations.
- 71-9508. Direct provider; direct service charges; acceptance of payments.
- 71-9509. Direct agreement; sale or transfer; written consent.
- 71-9510. Direct provider; acceptance of payments from medical assistance program.
- 71-9511. Direct provider; primary care services; payment.

### 71-9501 Act, how cited.

Sections 71-9501 to 71-9511 shall be known and may be cited as the Direct Primary Care Agreement Act.

**Source:** Laws 2016, LB817, § 1.  
Effective date July 21, 2016.

### 71-9502 Legislative intent; purpose of act.

(1) It is the intent of the Legislature to promote personal responsibility for health care and cost-effective delivery of health care by enabling the innovative use of direct primary care practice agreements for primary medical care in order to improve access to medical care, reduce the use of emergency departments for primary care, and allow emergency departments to treat emergencies more effectively and reduce costs.

(2) The purpose of the Direct Primary Care Agreement Act is to confirm that direct primary care agreements that meet the requirements of the act do not constitute insurance or function as a qualified health plan pursuant to any federal mandates.

**Source:** Laws 2016, LB817, § 2.  
Effective date July 21, 2016.

**71-9503 Terms, defined.**

For purposes of the Direct Primary Care Agreement Act:

(1) Direct agreement means a direct primary care agreement entered into on or after July 21, 2016, meeting the requirements of section 71-9504;

(2) Direct patient means an individual or family that is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct provider;

(3) Direct provider means (a) a physician or nurse practitioner who is licensed under the Uniform Credentialing Act, who specializes or is board-certified in general practice, family medicine, internal medicine, or pediatrics, and who provides primary care services through a direct agreement, (b) a group of physicians or nurse practitioners who are licensed under the Uniform Credentialing Act, who specialize or are board-certified in general practice, family medicine, internal medicine, or pediatrics, and who provide primary care services as a group through a direct agreement, or (c) an entity that sponsors, employs, or is otherwise affiliated with a group of physicians or nurse practitioners, which physicians or nurse practitioners are licensed under the Uniform Credentialing Act, specialize or are board-certified in general practice, family medicine, internal medicine, or pediatrics, and provide only primary care services as a group through a direct agreement if (i) the entity is wholly owned by the group of physicians or nurse practitioners or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and (ii) the entity is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer. Such an entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct agreement;

(4) Direct service charge means a charge for primary care services provided by, or to be provided by, the direct provider to the direct patient. Direct service charge includes a charge in any form, including a periodic retainer, membership fee, subscription fee, or other charge paid under a direct agreement;

(5) Patient's representative means a guardian or other person holding a power of attorney for health care; and

(6) Primary care means general health care services of the type provided at the time a patient seeks preventive care or first seeks health care services for a specific health concern. Primary care may include, but not be limited to:

(a) Care which promotes and maintains mental and physical health and wellness;

(b) Care which prevents disease;

(c) Screening, diagnosing, and treating acute or chronic conditions caused by disease, injury, or illness;

(d) Providing patient counseling and education; and

(e) Providing a broad spectrum of preventive and curative health care over a period of time.

**Source:** Laws 2016, LB817, § 3.

Effective date July 21, 2016.

## Cross References

Uniform Credentialing Act, see section 38-101.

**71-9504 Direct agreement; requirements; notice; copy to direct patient.**

(1) In order to be a valid direct agreement for purposes of the Direct Primary Care Agreement Act, a direct agreement between a direct provider and a direct patient or the patient's representative in which the direct provider charges a direct service charge as consideration for being available to provide and for providing primary care services to the direct patient shall meet the following requirements:

- (a) A direct agreement shall be in writing;
- (b) A direct agreement shall be signed by the direct provider or an agent of the direct provider and the direct patient or the direct patient's representative;
- (c) A direct agreement shall describe the scope of the primary care services included in the direct agreement;
- (d) A direct agreement shall state each location where primary care services may be provided and whether out-of-office services are included;
- (e) A direct agreement shall specify the direct service charge and any other charges for primary care services not covered by the direct service charge;
- (f) A direct agreement shall specify the duration of the direct agreement, whether renewal is automatic, and procedures for renewal if required;
- (g) A direct agreement shall specify the terms of the direct agreement and the conditions upon which the direct agreement may be terminated by the direct provider, including at least thirty days' notice to the direct patient in accordance with section 71-2085;
- (h) A direct agreement shall state that the direct agreement is terminable at will by written notice from the direct patient to the direct provider;
- (i) A direct agreement shall state that if a party provides written notice of termination of the direct agreement, the direct provider is required to refund to the direct patient all unearned direct service charges within thirty days after the date of the notice of termination;
- (j) A direct agreement shall prominently state in writing that the direct patient is required to pay the direct provider for any service not specified in the direct agreement and not otherwise covered by insurance; and
- (k) A direct agreement shall include a notice that reads substantially as follows:

NOTICE: This direct primary care agreement does not constitute insurance and is not a medical plan that provides health insurance coverage for purposes of any federal mandates. This direct primary care agreement only provides for the primary care services described in the agreement. It is recommended that insurance be obtained to cover medical services not provided for under this direct primary care agreement. You are always personally responsible for the payment of any additional medical expenses you may incur.

(2) A direct provider shall ensure that a copy of a direct agreement is given to each direct patient at the time the patient signs the direct agreement.

**Source:** Laws 2016, LB817, § 4.

Effective date July 21, 2016.

**71-9505 Direct provider; provide written disclaimer; notice; contents.**

A direct provider shall provide a written disclaimer on or accompanying each application for primary care services under a direct agreement with the direct provider and any guidelines distributed by or on behalf of the direct provider that informs a patient of his or her financial rights and responsibilities and that states that the direct provider will not bill a health insurance carrier for services covered under the direct agreement. The disclaimer shall also include a notice that reads substantially as follows:

NOTICE: This direct primary care agreement does not constitute insurance and is not a medical plan that provides health insurance coverage for purposes of any federal mandates. This direct primary care agreement only provides for the primary care services described in the agreement. It is recommended that insurance be obtained to cover medical services not provided for under this direct primary care agreement. You are always personally responsible for the payment of any additional medical expenses you may incur.

**Source:** Laws 2016, LB817, § 5.  
Effective date July 21, 2016.

**71-9506 Direct provider; limitation on activities; duty.**

(1) A direct provider shall not refuse to accept a new direct patient or discontinue care to an existing direct patient solely because of the patient's health status.

(2) A direct provider shall provide at least sixty days' advance notice to an existing direct patient of any change to the direct service charge applicable to the patient.

(3) A direct provider shall not pay for health care services covered by an agreement rendered to patients by direct providers other than the direct providers in the same direct primary care practice or their employees.

**Source:** Laws 2016, LB817, § 6.  
Effective date July 21, 2016.

**71-9507 Direct agreement; not insurance; certificate of authority or license not required; billing limitations.**

(1) A direct agreement is not insurance and is not subject to Chapter 44.

(2) Neither a direct provider nor an agent of a direct provider is required to obtain a certificate of authority or license under Chapter 44 to market, sell, or offer to sell a direct agreement.

(3) A direct provider shall not bill an insurer for services provided under a direct agreement. A patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This subsection does not prohibit a direct provider from billing insurance for services not provided under a direct agreement.

**Source:** Laws 2016, LB817, § 7.  
Effective date July 21, 2016.

**71-9508 Direct provider; direct service charges; acceptance of payments.**

A direct provider may accept payment of direct service charges directly or indirectly from third parties. A direct provider may accept all or part of a direct



service charge paid by an employer on behalf of an employee who is a direct patient. A direct provider shall not enter into a contract with an employer relating to direct agreements between the direct provider and employees of that employer other than to establish the timing and method of the payment of the direct service charge by the employer.

**Source:** Laws 2016, LB817, § 8.  
Effective date July 21, 2016.

**71-9509 Direct agreement; sale or transfer; written consent.**

A direct agreement shall not be sold or transferred by either party without the written consent of the other party to the direct agreement.

**Source:** Laws 2016, LB817, § 9.  
Effective date July 21, 2016.

**71-9510 Direct provider; acceptance of payments from medical assistance program.**

Subject to the restrictions established in the Direct Primary Care Agreement Act, a direct provider may accept payment of direct service charges directly or indirectly from the medical assistance program under the Medical Assistance Act or any entity contracting with the State of Nebraska to provide managed care in the medical assistance program subject to any necessary approval from the federal Centers for Medicare and Medicaid Services.

**Source:** Laws 2016, LB817, § 10.  
Effective date July 21, 2016.

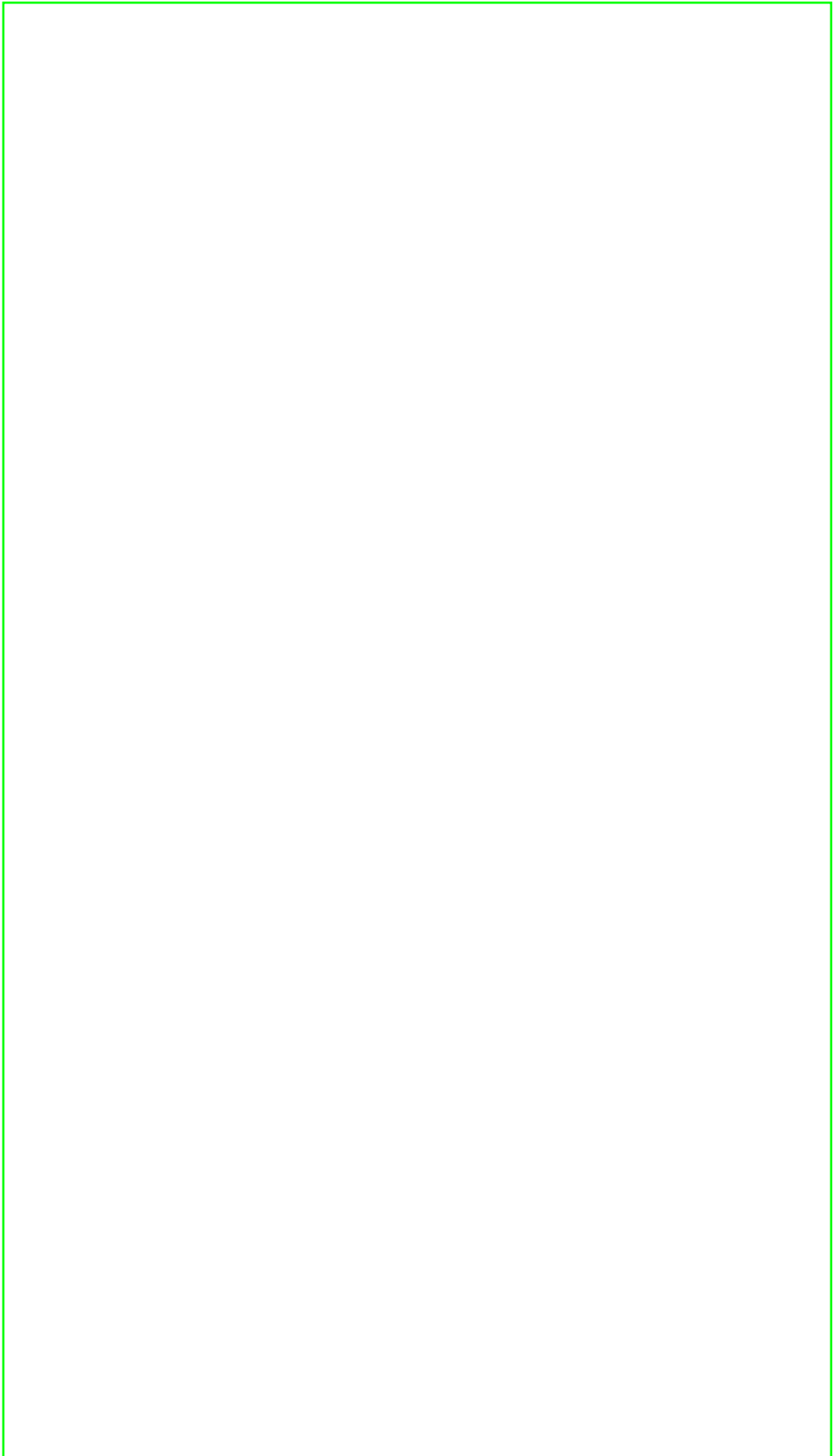
**Cross References**

Medical Assistance Act, see section 68-901.

**71-9511 Direct provider; primary care services; payment.**

A direct provider may provide primary care services to a patient who is not a party to a direct agreement with that provider and may receive payment for the services.

**Source:** Laws 2016, LB817, § 11.  
Effective date July 21, 2016.



## CHAPTER 72

### PUBLIC LANDS, BUILDINGS, AND FUNDS

#### Article.

2. School Lands and Funds. 72-201 to 72-274.
8. Public Buildings. 72-804 to 72-815.
10. Building Funds. 72-1001.
12. Investment of State Funds.
  - (a) Nebraska State Funds Investment Act. 72-1237 to 72-1255.
  - (b) Nebraska Capital Expansion Act. 72-1263.
  - (d) Review of Nebraska Investment Council. 72-1278.
17. Small Business Incubators. 72-1710.
18. Joslyn Castle. Repealed.
20. Niobrara River Corridor. 72-2007 to 72-2009.
22. Nebraska State Capitol Preservation and Restoration Act. 72-2211.
25. Nebraska Incentives Fund. 72-2501.

#### ARTICLE 2

#### SCHOOL LANDS AND FUNDS

#### Section

- 72-201. Board of Educational Lands and Funds; members; appointment; terms; expenses; duties; qualifications; organization; chairperson; meetings; secretary.
- 72-240.26. Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.
- 72-258.03. School lands; sale; appraised value.
- 72-270. Production of wind or solar energy; agreements; sections applicable.
- 72-271. Production of wind or solar energy; agreements; terms, defined.
- 72-272. Production of wind energy or solar energy; agreements; board; powers.
- 72-273. Wind energy or solar energy agreement; prior lease; effect on rights; compensation for damages.
- 72-274. Wind energy or solar energy agreement; rules and regulations.

**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. The compensation of the members shall be fifty dollars per day for each day's time actually engaged in the performance of the duties of their office. 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; Laws 2014, LB967, § 3.

#### 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.

#### **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.

#### **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.

#### **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.

**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.

**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.

**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.

**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.



## Section

72-815. Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance; excess land at Hastings Regional Center; sale; distribution of proceeds.

**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.

**72-815 Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance; excess land at Hastings Regional Center; sale; distribution of proceeds.**

(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.

(6) Land at the Hastings Regional Center determined by the committee to be excess 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. The sale of land shall only occur after notice of the sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the land is located and not less than thirty days prior to the sale of the land. The proceeds from the sale of the land, less maintenance expenses pending the sale and selling expenses, but including investment income on the sale proceeds, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund by the State Treasurer as follows:

(a) First, not exceeding five million three hundred seven thousand dollars to the General Fund; and

(b) Second, not exceeding three million dollars of available proceeds remaining to the Nebraska Capital Construction Fund.

**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; Laws 2013, LB199, § 30.

#### 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

- 72-1237. Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.
- 72-1239. Nebraska Investment Council; purpose; members; meetings; compensation.
- 72-1239.01. Council; duties and responsibilities.
- 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.
- 72-1249. Expenses; costs; how paid; Class V School Employees Retirement Cash Fund; created; use; investment.
- 72-1249.02. State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.
- 72-1255. Investment transactions; Auditor of Public Accounts; postaudits; report.

## (b) NEBRASKA CAPITAL EXPANSION ACT

- 72-1263. State investment officer; time deposit open account; conditions.

## (d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

- 72-1278. Nebraska Investment Council; comprehensive review of council; contract.

## (a) NEBRASKA STATE FUNDS INVESTMENT ACT

**72-1237 Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.**

The Nebraska Investment Council is created. For purposes of the Nebraska State Funds Investment Act, council means the Nebraska Investment Council. The council shall consist of five members, appointed by the Governor with the approval of the Legislature. The State Treasurer, the director of the Nebraska Public Employees Retirement Systems, and beginning January 1, 2017, the administrator of each retirement system provided for under the Class V School Employees Retirement Act shall serve as nonvoting, ex officio members. One of the appointed members shall be designated chairperson by the Governor.

Each of the appointed members of the council shall serve for a term of five years that begins on January 1 and may be removed by the Governor for cause after notice and an opportunity to be heard. A member may serve until his or her successor's appointment is effective. A member may be reappointed. A successor shall be appointed in the same manner as provided for the members first appointed, and in case of a vacancy caused by death, resignation, or otherwise, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

No member of the council shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violation of law, for actions relating to his or her duties as a member of the council.

**Source:** Laws 1969, c. 584, § 1, p. 2350; Laws 1991, LB 368, § 1; Laws 1991, LB 549, § 20; Laws 1996, LB 847, § 18; Laws 2002, LB 407, § 17; Laws 2006, LB 1019, § 7; Laws 2016, LB447, § 2. Operative date March 31, 2016.

## Cross References

Class V School Employees Retirement Act, see section 79-978.01.

**72-1239 Nebraska Investment Council; purpose; members; meetings; compensation.**

The purpose of the council is to formulate and establish such policies as it may deem necessary and proper which shall govern the methods, practices, and procedures followed by the state investment officer for the investment or reinvestment of state funds and funds described in section 83-133 and the purchase, sale, or exchange of securities as provided by the Nebraska State Funds Investment Act. The council shall meet from time to time as directed by the Governor or the chairperson or as requested by the state investment officer. The members of the council, except the State Treasurer, the director of the Nebraska Public Employees Retirement Systems, and beginning January 1, 2017, each administrator of a retirement system provided for under the Class V School Employees Retirement Act, shall be paid seventy-five dollars per diem. The members shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties as members as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1969, c. 584, § 3, p. 2350; Laws 1981, LB 204, § 145; Laws 1985, LB 335, § 1; Laws 1991, LB 368, § 2; Laws 1996, LB 847, § 20; Laws 1997, LB 4, § 1; Laws 2005, LB 503, § 6; Laws 2016, LB447, § 3.

Operative date March 31, 2016.

## Cross References

Class V School Employees Retirement Act, see section 79-978.01.

**72-1239.01 Council; duties and responsibilities.**

(1)(a) The appointed members of the council shall have the responsibility for the investment management of the assets of the retirement systems administered by the Public Employees Retirement Board as provided in section 84-1503, the assets of the Nebraska educational savings plan trust created pursuant to sections 85-1801 to 85-1814, the assets of the achieving a better life experience program pursuant to sections 77-1401 to 77-1409, and beginning January 1, 2017, the assets of each retirement system provided for under the Class V School Employees Retirement Act. Except as provided in subsection (4) of this section, the appointed members shall be deemed fiduciaries with respect to the investment of the assets of the retirement systems, of the Nebraska educational savings plan trust, and of the achieving a better life experience program and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of the retirement systems, of the Nebraska educational savings plan trust, and of the achieving a better life experience program solely in the interests of the members and beneficiaries of the retirement systems or the interests of the participants and beneficiaries of the Nebraska educational savings plan trust and the achieving a better life experience program, as the case may be, for the exclusive purposes of providing benefits to members, members' beneficiaries, partici-



pants, and participants' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law.

(2)(a) The appointed members of the council shall have the responsibility for the investment management of the assets of state funds. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of state funds and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of state funds solely in the interests of the citizens of the state within the limitations and according to the powers, duties, and purposes prescribed by law.

(3) The appointed members of the council shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the assets of the retirement systems, the Nebraska educational savings plan trust, the achieving a better life experience program, and state funds so as to minimize risk of large losses, unless in light of such circumstances it is clearly prudent not to do so. No assets of the retirement systems, the Nebraska educational savings plan trust, or the achieving a better life experience program shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

(4) Neither the appointed members of the council nor the state investment officer shall be deemed fiduciaries with respect to investments of the assets of a retirement system provided for under the Class V School Employees Retirement Act made by or on behalf of the board of education as defined in section 79-978 or the board of trustees provided for in section 79-980. Neither the council nor any member thereof nor the state investment officer shall be liable for the action or inaction of the board of education or the board of trustees with respect to the investment of the assets of a retirement system provided for under the Class V School Employees Retirement Act, the consequences of any such action or inaction of the board of education or the board of trustees, and any claims, suits, losses, damages, fees, and costs related to such action or inaction or consequences thereof.

**Source:** Laws 1996, LB 847, § 21; Laws 2002, LB 407, § 18; Laws 2003, LB 574, § 25; Laws 2015, LB591, § 11; Laws 2016, LB447, § 4. Operative date March 31, 2016.

#### Cross References

Class V School Employees Retirement Act, see section 79-978.01.

**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 and, beginning January 1, 2017, on the assets of each retirement system provided for under the Class V School Employees Retirement Act. 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; Laws 2016, LB447, § 5.

Operative date March 31, 2016.

#### Cross References

Class V School Employees Retirement Act, see section 79-978.01.

**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.**

**72-1249 Expenses; costs; how paid; Class V School Employees Retirement Cash Fund; created; use; investment.**

(1) Any expenses with respect to the purchase, sale, or exchange of any security shall be charged to the fund or funds on behalf of which such purchase, sale, or exchange was made. All other expenses of the state investment officer shall be paid out of appropriations for the office of the state investment officer.

(2) Beginning on March 31, 2016, any expenses with respect to the transfer to and assumption by the council and the state investment officer of the duty and authority to invest the assets of a retirement system provided for under the Class V School Employees Retirement Act shall be charged to the Class V School Employees Retirement Fund established in section 79-9,115. Such expenses shall be paid without the approval of the board of education as defined in section 79-978 or the board of trustees provided for in section 79-980.

(3) The Class V School Employees Retirement Cash Fund is created. The fund shall be administered by the council. The fund shall consist of funds received

for costs, fees, and expenses incurred by the council and the state investment officer for duties and authority related to the investment and reinvestment of the assets of a retirement system provided for under the Class V School Employees Retirement 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.

(4) Management, custodial, and service costs which are a direct expense of investing the assets of a retirement system provided for under the Class V School Employees Retirement Act may be paid from the income of such assets when it is not prohibited by statute or the Constitution of Nebraska. For purposes of this section, management, custodial, and service costs include investment counsel fees for managing assets, real estate mortgage loan service fees, real estate management fees, and custody fees for fund securities. All such fees shall be approved by the council and the state investment officer.

**Source:** Laws 1969, c. 584, § 13, p. 2354; Laws 1972, LB 1279, § 1; Laws 1977, LB 364, § 1; Laws 2016, LB447, § 6.  
Operative date March 31, 2016.

#### 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.

### **72-1249.02 State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.**

The State Investment Officer's Cash Fund is created. A pro rata share of the budget appropriated for the council shall be charged to the income of each fund managed, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the council. Approval of the agencies and boards administering these funds shall not be required.

It is the intent of this section to have funds managed by the state investment officer pay a pro rata share of the investment management expense when this is not prohibited by statute or the constitution.

Management, custodial, and service costs which are a direct expense of state funds may be paid from the income of such funds when this is not prohibited by statute or the Constitution of Nebraska. For purposes of this section, management, custodial, and service costs shall include, but not be limited to, investment counsel fees for managing assets, real estate mortgage loan service fees, real estate management fees, and custody fees for fund securities. All such fees shall be approved by the council and the state investment officer.

Beginning on March 31, 2016, a pro rata share of the budget appropriated for the council shall be charged to the income of the Class V School Employees Retirement Fund, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges among a retirement system provided for under the Class V School Employees Retirement Act and the other funds managed by the council may be made by any method determined to be reasonably related to actual costs incurred by the council. Approval of the

board of education as defined in section 79-978 and the board of trustees provided for in section 79-980 shall not be required.

**Source:** Laws 1983, LB 468, § 1; Laws 1987, LB 31, § 2; Laws 1987, LB 786, § 1; Laws 2002, LB 407, § 20; Laws 2016, LB447, § 7. Operative date March 31, 2016.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

**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.

(b) NEBRASKA CAPITAL EXPANSION ACT

**72-1263 State investment officer; time deposit open account; conditions.**

Except as provided in section 72-1264, the state investment officer shall, out of funds available for investment, initially cause to be offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions in this state a time deposit open account in the amount of one million dollars, except that the minimum amount that any bank, capital stock financial institution, or qualifying mutual financial institution may accept is the amount of one hundred thousand dollars. Such deposit shall be available at any investment date to such banks, capital stock financial institutions, or qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 72-1268.07. To the extent that the total amount of funds initially offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions is not accepted by such banks, capital stock financial institutions, and qualifying mutual financial institutions, the balance of such funds shall be immediately reoffered to any banks, capital stock financial institutions, and qualifying mutual financial institutions desiring additional funds in an amount not to exceed each bank's, capital stock financial institution's, or qualifying mutual financial institution's pro rata share of the remaining funds, or five million dollars for each bank, capital stock financial institution, or qualifying mutual financial institution, whichever is less. The reoffered funds shall be made available to such banks, capital stock financial institutions, and qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank, capital stock financial institution, or qualifying mutual financial institution may receive for deposit a sum of more than six million dollars.

**Source:** Laws 1978, LB 258, § 3; Laws 1985, LB 614, § 2; Laws 1990, LB 1146, § 3; Laws 2000, LB 932, § 35; Laws 2002, LB 957, § 26; Laws 2003, LB 175, § 4; Laws 2014, LB759, § 20.

## (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.

**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.

**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

72-2007. Niobrara Council; created; members; terms; meetings; expenses.

72-2008. Niobrara Council; powers and duties; report.

72-2009. Niobrara Council Fund; created; use; investment.

**72-2007 Niobrara Council; created; members; terms; meetings; expenses.**

(1) The Niobrara Council is created. The council membership shall include:

(a) A commissioner from each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;

(b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;

(c) The secretary of the Game and Parks Commission or his or her designee;

(d) The regional director for the National Park Service or his or her designee and the regional director for the United States Fish and Wildlife Service or his or her designee. The members under this subdivision shall be nonvoting members unless and until the agencies represented by these members formally authorize such members to vote on all matters before the council by notifying the council and the Governor in writing;

(e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board members on the council;

(f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council;

(g) A timber industry representative operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council; and

(h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council.

The appointments made pursuant to subdivisions (1)(e) through (h) of this section shall be subject to confirmation by the Legislature. The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor.

(2) The council shall elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council shall meet on a regular basis with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council.

(3) A quorum shall be present at a meeting before any action may be taken by the council. A quorum shall be a majority of the members who are selected and serving and who vote on issues before the council. All actions of the council require a majority vote of the quorum present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 72-2010 requires a vote of two-thirds of all the council members who are selected and serving and who vote on issues before the council.



(4) Members shall be reimbursed for actual and necessary expenses incurred in carrying out their duties on the council as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2000, LB 1234, § 3; Laws 2001, LB 182, § 1; Laws 2015, LB310, § 1; Laws 2016, LB1038, § 15.  
Effective date July 21, 2016.

**72-2008 Niobrara Council; powers and duties; report.**

The mission of the Niobrara Council is to assist in all aspects of the management of the Niobrara scenic river corridor since portions of the Niobrara River have been designated as a national scenic river under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, giving consideration and respect to local and governmental input and private landowner rights, and to maintain and protect the integrity of the resources associated with the Niobrara scenic river corridor. The council shall perform management functions related to the Niobrara scenic river corridor, including, but not limited to, those authorized and delegated to it by the National Park Service. The council may promulgate its own rules and internal policies to carry out the purposes of the Niobrara Scenic River Act. The Game and Parks Commission may provide administrative, budgetary, operational, and programmatic support when requested by the council to carry out its duties. In the Niobrara scenic river corridor, the council may hold title to real estate in the name of the council. The council may purchase, accept gifts of, or trade real estate and may obtain conservation easements as provided in the Conservation and Preservation Easements Act. Acquisition of conservation easements outside the boundaries of the Niobrara scenic river corridor shall require the approval of the appropriate governing body as provided in section 76-2,112. On December 1, 2016, and on each December 1 thereafter, the council shall electronically submit an annual report to the Clerk of the Legislature and the chairperson of the Natural Resources Committee of the Legislature describing expenditures made pursuant to the Niobrara Scenic River Act.

**Source:** Laws 2000, LB 1234, § 4; Laws 2002, LB 1003, § 44; Laws 2016, LB1038, § 16.  
Effective date July 21, 2016.

**Cross References**

**Conservation and Preservation Easements Act**, see section 76-2,118.

**72-2009 Niobrara Council Fund; created; use; investment.**

(1) 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.

(2) The State Treasurer shall, on March 31, 2016, transfer the balance of any money in the Nebraska Youth Conservation Program Fund, after the transfer of

one hundred thousand dollars to the Cowboy Trail Fund as provided for in subsection (2) of section 37-913 has been made, to the Niobrara Council Fund.

**Source:** Laws 2000, LB 1234, § 5; Laws 2009, First Spec. Sess., LB3, § 49; Laws 2016, LB957, § 7.

Effective date March 31, 2016.

**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.