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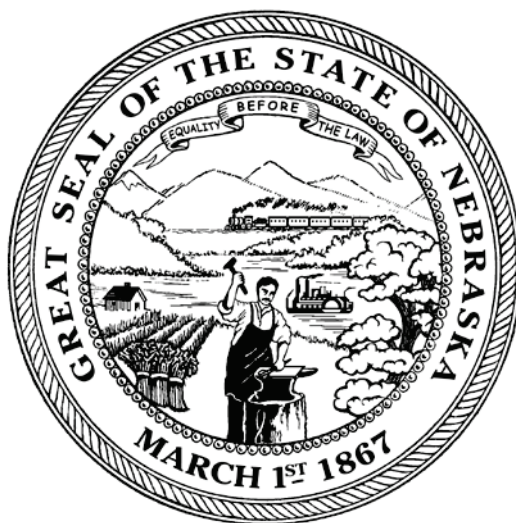


# REVISED STATUTES OF NEBRASKA

## 2018 CUMULATIVE SUPPLEMENT

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Revisor of Statutes

For the benefit of the  
State of Nebraska

## SCHOOLS

# CHAPTER 79

## SCHOOLS

### Article.

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## ARTICLE 1

## DEFINITIONS AND CLASSIFICATIONS

## Section

- 79-101. Terms, defined.
- 79-102. School districts; classification.
- 79-104. Classification of school districts; change; Commissioner of Education; duties.

**79-101 Terms, defined.**

For purposes of Chapter 79:

(1) School district means the territory under the jurisdiction of a single school board authorized by Chapter 79;

(2) School means a school under the jurisdiction of a school board authorized by Chapter 79;

(3) Legal voter means a registered voter as defined in section 32-115 who is domiciled in a precinct or ward in which he or she is registered to vote and which precinct or ward lies in whole or in part within the boundaries of a school district for which the registered voter chooses to exercise his or her right to vote at a school district election;

(4) Prekindergarten programs means all early childhood programs provided for children who have not reached the age of five by the date provided in section 79-214 for kindergarten entrance;

(5) Elementary grades means grades kindergarten through eight, inclusive;

(6) High school grades means all grades above the eighth grade;

(7) School year means (a) for elementary grades other than kindergarten, the time equivalent to at least one thousand thirty-two instructional hours and (b) for high school grades, the time equivalent to at least one thousand eighty instructional hours;

(8) Instructional hour means a period of time, at least sixty minutes, which is actually used for the instruction of students;

(9) Teacher means any certified employee who is regularly employed for the instruction of pupils in the public schools;

(10) Administrator means any certified employee such as superintendent, assistant superintendent, principal, assistant principal, school nurse, or other supervisory or administrative personnel who do not have as a primary duty the instruction of pupils in the public schools;

(11) School board means the governing body of any school district. Board of education has the same meaning as school board;

(12) Teach means and includes, but is not limited to, the following responsibilities: (a) The organization and management of the classroom or the physical area in which the learning experiences of pupils take place; (b) the assessment and diagnosis of the individual educational needs of the pupils; (c) the planning, selecting, organizing, prescribing, and directing of the learning experiences of pupils; (d) the planning of teaching strategies and the selection of available materials and equipment to be used; and (e) the evaluation and reporting of student progress;

(13) Permanent school fund means the fund described in section 79-1035.01;

(14) Temporary school fund means the fund described in section 79-1035.02;

(15) School lands means the lands described in section 79-1035.03. Educational lands has the same meaning as school lands;

(16) Community eligibility provision means the alternative to household applications for free and reduced-price meals in high-poverty schools enacted in section 104(a) of the federal Healthy, Hunger-Free Kids Act of 2010, section 11(a)(1) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1759a(a)(1), as such act and section existed on January 1, 2015, and administered by the United States Department of Agriculture; and

(17) Certificate, certificated, or certified, when referring to an individual holding a certificate to teach, administer, or provide special services, also includes an individual who holds a permit issued by the Commissioner of Education pursuant to sections 79-806 to 79-815.

The State Board of Education may adopt and promulgate rules and regulations to define school day and other appropriate units of the school calendar.

**Source:** Laws 1881, c. 78, subdivision I, § 1, p. 331; R.S.1913, § 6700; C.S.1922, § 6238; C.S.1929, § 79-101; R.S.1943, § 79-101; Laws 1949, c. 256, § 1, p. 690; Laws 1971, LB 802, § 1; Laws 1984, LB 994, § 3; Laws 1988, LB 1197, § 1; Laws 1993, LB 348, § 5; R.S.1943, (1994), § 79-101; Laws 1996, LB 900, § 1; Laws 1997,

LB 345, § 5; Laws 1999, LB 813, § 5; Laws 2003, LB 67, § 2; Laws 2010, LB1006, § 1; Laws 2015, LB525, § 2; Laws 2018, LB377, § 9.

Operative date January 1, 2019.

### **79-102 School districts; classification.**

School districts in this state are classified as follows:

(1) Class III includes any school district embracing territory having a population of less than one hundred fifty thousand inhabitants that maintains both elementary and high school grades under the direction of a single school board;

(2) Class IV includes any school district embracing territory having a population of one hundred thousand or more inhabitants with a city of the primary class within the territory of the district that maintains both elementary and high school grades under the direction of a single school board; and

(3) Class V includes any school district whose employees participate in a retirement system established pursuant to the Class V School Employees Retirement Act and which embraces territory having a city of the metropolitan class within the territory of the district that maintains both elementary grades and high school grades under the direction of a single school board and any school district with territory in a city of the metropolitan class created pursuant to the Learning Community Reorganization Act and designated as a Class V school district in the reorganization plan.

**Source:** Laws 1949, c. 256, § 2, p. 691; Laws 1959, c. 379, § 1, p. 1320; Laws 1981, LB 16, § 1; R.S.1943, (1994), § 79-102; Laws 1996, LB 900, § 2; Laws 1997, LB 345, § 6; Laws 1998, LB 629, § 1; Laws 2003, LB 394, § 1; Laws 2005, LB 126, § 8; Laws 2006, LB 1024, § 15; Referendum 2006, No. 422; Laws 2018, LB377, § 10.  
Operative date January 1, 2019.

#### **Cross References**

City of the metropolitan class, population, see section 14-101.

City of the primary class, population, see section 15-101.

Class V School Employees Retirement Act, see section 79-978.01.

Commissioner of Education, assign number to each district, see section 79-307.

Learning Community Reorganization Act, see section 79-4,117.

### **79-104 Classification of school districts; change; Commissioner of Education; duties.**

(1)(a) Whenever any Class III or IV school district attains the number of inhabitants which requires its reclassification as a Class IV or V school district, respectively, the Commissioner of Education shall reclassify such district as a district of the next higher class.

(b) Any reclassification pursuant to subdivision (1)(a) of this section shall become effective at the beginning of the next fiscal year after the order of the commissioner.

(2) On January 1, 2019, the commissioner shall reclassify any school district to the classification required by the changes made to section 79-102 by Laws 2018, LB377, which reclassification shall be effective immediately.

(3) Within fifteen days after the reclassification of any school district pursuant to subsection (1) or (2) of this section, the commissioner shall notify the county clerk or election commissioner, of the county in which the greatest



number of legal voters in the school district reside, of such change in classification and the effective date of such change.

**Source:** Laws 1949, c. 256, § 6, p. 692; Laws 1971, LB 212, § 2; Laws 1981, LB 446, § 34; R.S.1943, (1994), § 79-106; Laws 1996, LB 900, § 4; Laws 1997, LB 345, § 7; Laws 2018, LB377, § 11. Operative date January 1, 2019.

## ARTICLE 2

### PROVISIONS RELATING TO STUDENTS

#### (a) COMPULSORY EDUCATION

Section  
79-203. Compulsory attendance; necessarily employed children; permit.

#### (c) ADMISSION REQUIREMENTS

79-215. Students; admission; tuition; persons exempt; department; duties.

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#### (q) STATE SCHOOL SECURITY DIRECTOR

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#### (t) STUDENT ONLINE PERSONAL PROTECTION ACT

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79-2,154. Terms, defined.

79-2,155. Operator; prohibited acts; duties; use or disclosure of covered information; applicability of section.

## (a) COMPULSORY EDUCATION

**79-203 Compulsory attendance; necessarily employed children; permit.**

In case the services or earnings of a child are necessary for his or her own support or the support of those actually dependent upon him or her and the child is fourteen years of age or more and not more than sixteen years of age and has completed the work of the eighth grade, the person having legal or actual charge of such child may apply to the superintendent of the school district in which the child resides or a person designated in writing by the superintendent. The superintendent or designee may, in his or her discretion, issue a permit allowing such child to be employed.

**Source:** Laws 1921, c. 52, § 1(c), p. 227; C.S.1922, § 6508b; Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1905; Laws 1949, c. 256, § 11, p. 694; R.S.1943, (1994), § 79-205; Laws 1996, LB 900, § 7; Laws 1997, LB 347, § 3; Laws 1999, LB 272, § 24; Laws 2018, LB377, § 12.  
Operative date January 1, 2019.

## Cross References

For provisions relating to child labor, see Chapter 48, article 3.

## (c) ADMISSION REQUIREMENTS

**79-215 Students; admission; tuition; persons exempt; department; duties.**

(1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge.

(2) A school board shall admit a student upon request without charge if at least one of the student's parents resides in the school district.

(3) A school board shall admit any homeless student upon request without charge if the district is the district in which the student (a) is currently located, (b) attended when permanently housed, or (c) was last enrolled.

(4) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(5) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.

(6) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(7) For school years prior to school year 2017-18, a school board of any school district that is a member of a learning community shall admit nonresident students to the school district pursuant to the open enrollment provisions of a diversity plan in a learning community as authorized by section 79-2110, and such admission shall be without charge.

(8) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board.

(9) When a student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 shall be deemed a resident of the district in which he or she resided at the time he or she became a foster child, unless it is determined under section 43-1311 or 43-1312 that he or she will not attend such district in which case he or she shall be deemed a resident of the district in which the foster family home or foster home is located.

(10)(a) When a student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established pursuant to the Medical Assistance Act and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(b) If a student is residing in a residential setting as described in subdivision (10)(a) of this section and such residential setting does not maintain an interim-program school as defined in section 79-1119.01 or an approved or accredited school, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services and support services as defined in section 79-1125.01, unless a parent or guardian and the resident school district agree that an appropriate education will be provided by the resident school district while the student is residing in such residential setting. If the resident school district is required to contract, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the

needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into, all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located.

(c) If a student is residing in a residential setting as described in subdivision (10)(a) of this section and such residential setting maintains an interim-program school as defined in section 79-1119.01 or an approved or accredited school, the department shall reimburse such residential setting for the provision of all educational services, including all special education services and support services, with the amount of payment for all educational services determined pursuant to the average per pupil cost of the service agency as defined in section 79-1116. The resident school district shall retain responsibility for such student's individualized education plan, if any. The educational services may be provided through (i) such interim-program school or approved or accredited school, (ii) a contract between the residential setting and the school district in which such residential setting is located, (iii) a contract between the residential setting and another service agency as defined in section 79-1124, or (iv) a combination of such educational service providers.

(d) If a school district pays a school district in which a residential setting is located for educational services provided pursuant to subdivision (10)(b) of this section and it is later determined that a different school district was the resident school district for such student at the time such educational services were provided, the school district that was later determined to be the resident school district shall reimburse the school district that initially paid for the educational services one hundred ten percent of the amount paid.

(e) A student residing in a residential setting described in this subsection shall be defined as a student with a handicap pursuant to Article VII, section 11, of the Constitution of Nebraska, and as such the state and any political subdivision may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide the educational services to the student if such educational services are nonsectarian in nature.

(11) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(12) No tuition shall be charged for students who may be by law allowed to attend the school without charge.

(13) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of a student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a telephone number and

address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

(14) The department may adopt and promulgate rules and regulations to carry out the department's responsibilities under this section.

**Source:** Laws 1881, c. 78, subdivision V, § 4, p. 352; Laws 1883, c. 72, § 11, p. 293; Laws 1901, c. 63, § 10, p. 440; R.S.1913, § 6784; Laws 1921, c. 64, § 1, p. 250; C.S.1922, § 6325; Laws 1927, c. 88, § 1, p. 257; C.S.1929, § 79-504; R.S.1943, § 79-504; Laws 1947, c. 273, § 1, p. 877; Laws 1949, c. 256, § 84, p. 720; Laws 1972, LB 1219, § 1; Laws 1974, LB 43, § 1; Laws 1979, LB 128, § 1; Laws 1980, LB 770, § 1; Laws 1980, LB 839, § 1; Laws 1982, LB 642, § 1; Laws 1984, LB 286, § 1; Laws 1984, LB 768, § 1; Laws 1985, LB 592, § 1; Laws 1985, LB 725, § 1; Laws 1991, LB 511, § 29; Laws 1992, LB 245, § 34; Laws 1992, Third Spec. Sess., LB 3, § 1; Laws 1994, LB 858, § 5; R.S.1943, (1994), § 79-445; Laws 1996, LB 900, § 19; Laws 1996, LB 1044, § 814; Laws 1997, LB 307, § 212; Laws 2000, LB 1243, § 2; Laws 2001, LB 797, § 5; Laws 2002, LB 1105, § 503; Laws 2006, LB 1248, § 87; Laws 2008, LB1014, § 68; Laws 2010, LB1071, § 3; Laws 2010, LB1087, § 1; Laws 2015, LB525, § 4; Laws 2016, LB1067, § 11.

#### Cross References

Medical Assistance Act, see section 68-901.

### (d) HEALTH CARE

#### **79-224 Asthma or anaphylaxis condition; self-management by student; conditions; request; authorization.**

(1) An approved or accredited public, private, denominational, or parochial school shall allow a student with asthma or anaphylaxis to self-manage his or her asthma or anaphylaxis condition upon written request of the student's parent or guardian and authorization of the student's physician or other health care professional who prescribed the medication for treatment of the student's condition, upon receipt of a signed statement under subsection (5) of this section, and pursuant to an asthma or anaphylaxis medical management plan developed under subsection (2) of this section.

(2) Upon receipt of a written request and authorization under subsection (1) of this section, the school and the parent or guardian, in consultation with the student's physician or such other health care professional, shall develop an asthma or anaphylaxis medical management plan for the student for the current school year. Such plan shall (a) identify the health care services the student may receive at school relating to such condition, (b) evaluate the student's understanding of and ability to self-manage his or her asthma or anaphylaxis condition, (c) permit regular monitoring of the student's self-management of his or her asthma or anaphylaxis condition by an appropriately credentialed health care professional, (d) include the name, purpose, and dosage of the prescription asthma or anaphylaxis medication prescribed for such student, (e) include procedures for storage and access to backup supplies

of such prescription asthma or anaphylaxis medication, and (f) be signed by the student's parent or guardian and the physician or such other health care professional responsible for treatment of the student's asthma or anaphylaxis condition. The school may consult with a registered nurse or other health care professional employed by such school during development of the plan. The plan and the signed statement required by subsection (5) of this section shall be kept on file at the school where the student is enrolled.

(3) Pursuant to the asthma or anaphylaxis medical management plan developed under subsection (2) of this section, a student with asthma or anaphylaxis shall be permitted to self-manage his or her asthma or anaphylaxis condition in the classroom or any part of the school or on school grounds, during any school-related activity, or in any private location specified in the plan. The student for whom an asthma or anaphylaxis medical management plan has been developed under this section shall promptly notify the school nurse, such nurse's designee, or another designated adult at the school when such student has self-administered prescription asthma or anaphylaxis medication pursuant to such plan.

(4)(a) If a student for whom an asthma or anaphylaxis medical management plan has been developed under this section uses his or her prescription asthma or anaphylaxis medication other than as prescribed, he or she may be subject to disciplinary action by the school, except that such disciplinary action shall not include a limitation or restriction on the student's access to such medication. The school shall promptly notify the parent or guardian of any disciplinary action imposed.

(b) If a student for whom an asthma or anaphylaxis medical management plan has been developed under this section injures school personnel or another student as the result of the misuse of prescription asthma or anaphylaxis medication or related medical supplies, the parent or guardian of the student for whom such plan has been developed shall be responsible for any and all costs associated with such injury.

(5) The parent or guardian of a student for whom an asthma or anaphylaxis medical management plan has been developed under this section shall sign a statement acknowledging that (a) the school and its employees and agents are not liable for any injury or death arising from a student's self-management of his or her asthma or anaphylaxis condition and (b) the parent or guardian shall indemnify and hold harmless the school and its employees and agents against any claim arising from a student's self-management of his or her asthma or anaphylaxis condition.

**Source:** Laws 2006, LB 1148, § 1; Laws 2016, LB1086, § 1.

#### (e) ENROLLMENT OPTION PROGRAM

##### **79-233 Terms, defined.**

For purposes of sections 79-232 to 79-246:

(1) Enrollment option program means the program established in section 79-234;

(2) Option school district means the public school district that an option student chooses to attend instead of his or her resident school district;

(3) Option student means a student that has chosen to attend an option school district, including an open enrollment option student or a student who

resides in a learning community and began attendance as an option student in an option school district in such learning community prior to the end of the first full school year for which the option school district will be a member of such learning community, but, for school years prior to school year 2017-18, not including a student who resides in a learning community and who attends pursuant to section 79-2110 another school district in such learning community;

(4) Open enrollment option student means a student who resides in a school district that is a member of a learning community, attended a school building in another school district in such learning community as an open enrollment student pursuant to section 79-2110, and attends such school building as an option student pursuant to section 79-235.01;

(5) Resident school district means the public school district in which a student resides or the school district in which the student is admitted as a resident of the school district pursuant to section 79-215; and

(6) Siblings means all children residing in the same household on a permanent basis who have the same mother or father or who are stepbrother or stepsister to each other.

**Source:** Laws 1989, LB 183, § 2; Laws 1990, LB 843, § 3; Laws 1992, LB 1001, § 36; R.S.1943, (1994), § 79-3402; Laws 1996, LB 900, § 37; Laws 1997, LB 347, § 4; Laws 2006, LB 1024, § 18; Laws 2008, LB988, § 3; Laws 2009, LB62, § 1; Laws 2009, LB549, § 4; Laws 2016, LB1067, § 12.

#### **79-234 Enrollment option program; established; limitations.**

(1) An enrollment option program is hereby established to enable any kindergarten through twelfth grade Nebraska student to attend a school in a Nebraska public school district in which the student does not reside subject to the limitations prescribed in section 79-238. The option shall be available only once to each student prior to graduation, except that the option does not count toward such limitation if such option meets, or met at the time of the option, one of the following criteria: (a) The student relocates to a different resident school district, (b) the option school district merges with another district, (c) the student will have completed either the grades offered in the school building originally attended in the option school district or the grades immediately preceding the lowest grade offered in the school building for which a new option is sought, (d) the option would allow the student to continue current enrollment in a school district, (e) the option would allow the student to enroll in a school district in which the student was previously enrolled as a student, or (f) the student is an open enrollment option student. Sections 79-232 to 79-246 do not relieve a parent or guardian from the compulsory attendance requirements in section 79-201.

(2) The program shall not apply to any student who resides in a district which has entered into an annexation agreement pursuant to section 79-473, except that such student may transfer to another district which accepts option students.

**Source:** Laws 1989, LB 183, § 3; Laws 1990, LB 843, § 4; Laws 1991, LB 207, § 3; Laws 1993, LB 348, § 64; R.S.1943, (1994), § 79-3403; Laws 1996, LB 900, § 38; Laws 2008, LB1154, § 7; Laws 2009,

LB549, § 5; Laws 2013, LB410, § 3; Laws 2016, LB1066, § 2; Laws 2016, LB1067, § 13; Laws 2018, LB377, § 13.  
Operative date January 1, 2019.

**79-235 Option students; treatment; building assignment.**

For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-1127, except as provided in section 79-241 and, for open enrollment option students, except as provided in section 79-235.01, option students shall be treated as resident students of the option school district. The option student may request a particular school building, but the building assignment of the option student shall be determined by the option school district except as provided in section 79-235.01 for open enrollment option students and in subsection (3) of section 79-2110 for students attending a focus school, focus program, or magnet school. In determining eligibility for extracurricular activities as defined in section 79-2,126, the option student shall be treated similarly to other students who transfer into the school from another public, private, denominational, or parochial school.

**Source:** Laws 1989, LB 183, § 4; Laws 1990, LB 843, § 5; R.S.1943, (1994), § 79-3404; Laws 1996, LB 900, § 39; Laws 1996, LB 1050, § 8; Laws 2003, LB 249, § 1; Laws 2016, LB1067, § 14.

**79-235.01 Open enrollment option student; continued attendance; attendance at another school building; application.**

Each student attending a school building outside of the resident school district as an open enrollment student pursuant to section 79-2110 for any part of school year 2016-17 shall be automatically approved as an open enrollment option student beginning with school year 2017-18 and allowed to continue attending such school building as an option student without submitting an additional application unless the student has completed the grades offered in such school building or has been expelled and is disqualified pursuant to section 79-266.01. Except as provided in subsection (3) of section 79-2110 for students attending a focus school, focus program, or magnet school, approval as an open enrollment option student pursuant to this section does not permit the student to attend another school building within the option school district unless an application meeting the requirements prescribed in section 79-237 is approved by the school board of the option school district. Upon approval of an application meeting the requirements prescribed in section 79-237, a student previously enrolled as an open enrollment student in the option school district shall be treated as an option student of the option school district without regard to his or her former status as an open enrollment student. Except as otherwise provided in this section and sections 79-234, 79-235, 79-237, and 79-238 and subsection (3) of section 79-2110, open enrollment option students shall be treated as option students of the option school district.

**Source:** Laws 2016, LB1067, § 15.

**79-237 Attendance; application; cancellation; forms.**

(1) For a student to begin attendance as an option student in an option school district, the student's parent or legal guardian shall submit an application to the school board of the option school district between September 1 and March 15 for attendance during the following and subsequent school years. Except as



provided in subsection (2) of this section, applications submitted after March 15 shall contain a release approval from the resident school district on the application form prescribed and furnished by the State Department of Education pursuant to subsection (8) of this section. A district may not accept or approve any applications submitted after such date without such a release approval. The option school district shall provide the resident school district with the name of the applicant on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission. The option school district shall notify, in writing, the parent or legal guardian of the student and the resident school district whether the application is accepted or rejected on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission. An option school district that is a member of a learning community may not approve an application pursuant to this section for a student who resides in such learning community to attend prior to school year 2017-18.

(2) A student who relocates to a different resident school district after February 1 or whose option school district merges with another district effective after February 1 may submit an application to the school board of an option school district for attendance during the current or immediately following and subsequent school years unless the applicant is a resident of a learning community and the application is for attendance to begin prior to school year 2017-18 in an option school district that is also a member of such learning community. Such application does not require the release approval of the resident school district. The option school district shall accept or reject such application within forty-five days.

(3) A parent or guardian may provide information on the application for an option school district that is a member of a learning community regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of subsection (4) of section 79-238. Nothing in this subsection requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of subsection (4) of section 79-238 shall be based on any verified information provided on the application. If no such information is provided, the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of subsection (4) of section 79-238.

(4) Applications for students who do not actually attend the option school district may be withdrawn in good standing upon mutual agreement by both the resident and option school districts.

(5) No option student shall attend an option school district for less than one school year unless the student relocates to a different resident school district, completes requirements for graduation prior to the end of his or her senior year, transfers to a private or parochial school, or upon mutual agreement of the resident and option school districts cancels the enrollment option and returns to the resident school district.

(6) Except as provided in subsection (5) of this section or, for open enrollment option students, in section 79-235.01, the option student shall attend the option school district until graduation unless the student relocates in a different resident school district, transfers to a private or parochial school, or chooses to return to the resident school district.

(7) In each case of cancellation pursuant to subsections (5) and (6) of this section, the student's parent or legal guardian shall provide written notification to the school board of the option school district and the resident school district on forms prescribed and furnished by the department under subsection (8) of this section in advance of such cancellation.

(8) The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

(9) An option student who subsequently chooses to attend a private or parochial school and who is not an open enrollment option student shall be automatically accepted to return to either the resident school district or option school district upon the completion of the grade levels offered at the private or parochial school. If such student chooses to return to the option school district, the student's parent or legal guardian shall submit another application to the school board of the option school district which shall be automatically accepted, and the deadlines prescribed in this section shall be waived.

**Source:** Laws 1989, LB 183, § 6; Laws 1990, LB 843, § 7; Laws 1993, LB 348, § 66; Laws 1993, LB 838, § 1; R.S.1943, (1994), § 79-3406; Laws 1996, LB 900, § 41; Laws 2001, LB 797, § 6; Laws 2006, LB 1024, § 19; Laws 2009, LB62, § 2; Laws 2009, LB549, § 6; Laws 2013, LB410, § 4; Laws 2016, LB1066, § 3; Laws 2016, LB1067, § 16; Laws 2017, LB512, § 7; Laws 2018, LB668, § 1. Effective date July 19, 2018.

**79-238 Application acceptance and rejection; transportation for option students; specific standards; request for release; standards and conditions.**

(1) Except as provided in this section and sections 79-235.01 and 79-240, the school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications and for providing transportation for option students. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option school district. For a school district that is not a member of a learning community, capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option school district will contract based on existing contractual arrangements, and availability of appropriate special education programs. To facilitate option enrollment within a learning community, member school districts shall annually (a) establish and report a maximum capacity for each school building under such district's control pursuant to procedures, criteria, and deadlines established by the learning community coordinating council and (b) provide a copy of the standards for acceptance and rejection of applications and transportation policies for option students to the learning community coordinating council. Except as otherwise provided in this section, the school board of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the English language, or previous disciplinary proceedings except as provided in section 79-266.01. False or substantively misleading information submitted by a parent

or guardian on an application to an option school district may be cause for the option school district to reject a previously accepted application if the rejection occurs prior to the student's attendance as an option student.

(2) The school board of every school district shall also adopt specific standards and conditions for acceptance or rejection of a request for release of a resident or option student submitting an application to an option school district after March 15 under subsection (1) of section 79-237. Standards shall not include that a request occurred after the deadline set forth in this subsection.

(3) Any option school district that is not a member of a learning community shall give first priority for enrollment to siblings of option students, except that the option school district shall not be required to accept the sibling of an option student if the district is at capacity except as provided in subsection (1) of section 79-240.

(4) Any option school district that is in a learning community shall give first priority for enrollment to siblings of option students enrolled in the option school district, second priority for enrollment to students who have previously been enrolled in the option school district as an open enrollment student, third priority for enrollment to students who reside in the learning community and who contribute to the socioeconomic diversity of enrollment at the school building to which the student will be assigned pursuant to section 79-235, and final priority for enrollment to other students who reside in the learning community. The option school district shall not be required to accept a student meeting the priority criteria in this section if the district is at capacity as determined pursuant to subsection (1) of this section except as provided in section 79-235.01 or 79-240. For purposes of the enrollment option program, a student who contributes to the socioeconomic diversity of enrollment at a school building within a learning community means (a) a student who does not qualify for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will be assigned to attend either has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or provides free meals to all students pursuant to the community eligibility provision or (b) a student who qualifies for free or reduced-price lunches based on information collected voluntarily from parents and guardians pursuant to section 79-237 when, based upon the certification pursuant to section 79-2120, the school building the student will be assigned to attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community and does not provide free meals to all students pursuant to the community eligibility provision.

**Source:** Laws 1989, LB 183, § 7; Laws 1990, LB 843, § 8; Laws 1991, LB 207, § 5; Laws 1992, LB 1001, § 37; Laws 1994, LB 930, § 2; R.S.1943, (1994), § 79-3407; Laws 1996, LB 900, § 42; Laws 1997, LB 346, § 2; Laws 2001, LB 797, § 7; Laws 2006, LB 1024, § 20; Laws 2009, LB62, § 3; Laws 2009, LB549, § 7; Laws 2016, LB1066, § 4; Laws 2016, LB1067, § 17.

**79-241 Transportation; fee authorized; reimbursement; when; free transportation; when.**

(1) Except as otherwise provided in this section, section 79-611 does not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. A school district may, upon mutual agreement with the parent or legal guardian of an option student, provide transportation to the option student on the same basis as provided for resident students. The school district may charge the parents of each option student transported a fee sufficient to recover the additional costs of such transportation.

(2) Option students who qualify for free lunches shall be eligible for either free transportation or transportation reimbursement as described in section 79-611 from the option school district pursuant to policies established by the school district in compliance with this section, except that they shall be reimbursed at the rate of one hundred forty-two and one-half percent of the mandatorily established mileage rate provided in section 81-1176 for each mile actually and necessarily traveled on each day of attendance by which the distance traveled one way from the residence of such student to the schoolhouse exceeds three miles.

(3) For open enrollment option students who received free transportation for school year 2016-17 pursuant to subsection (2) of section 79-611, the school board of the option school district shall continue to provide free transportation for the duration of the student's status as an open enrollment option student or for the duration of the student's enrollment in a pathway pursuant to subsection (3) of section 79-2110 unless the student relocates to a school district that would have prevented the student from qualifying for free transportation for the 2016-17 school year pursuant to subsection (2) of section 79-611.

(4) For option students verified as having a disability as defined in section 79-1118.01, the transportation services set forth in section 79-1129 shall be provided by the resident school district. The State Department of Education shall reimburse the resident school district for the cost of transportation in accordance with section 79-1144.

**Source:** Laws 1989, LB 183, § 10; Laws 1990, LB 843, § 10; Laws 1991, LB 207, § 7; Laws 1992, LB 1001, § 40; Laws 1993, LB 838, § 2; Laws 1993, LB 348, § 69; R.S.1943, (1994), § 79-3410; Laws 1996, LB 900, § 45; Laws 1997, LB 346, § 3; Laws 1998, Spec. Sess., LB 1, § 8; Laws 2013, LB410, § 5; Laws 2016, LB1067, § 18.

### **79-245 Tax Equity and Educational Opportunities Support Act; applicability.**

The Tax Equity and Educational Opportunities Support Act shall apply to the enrollment option program as provided in this section. For purposes of the act, option students shall not be counted as formula students by the resident school district and shall be counted as formula students by the option school district.

**Source:** Laws 1989, LB 183, § 15; Laws 1990, LB 843, § 12; Laws 1991, LB 511, § 69; Laws 1992, LB 245, § 74; R.S.1943, (1994), § 79-3415; Laws 1996, LB 900, § 49; Laws 1997, LB 346, § 5; Laws 1997, LB 347, § 5; Laws 1998, Spec. Sess., LB 1, § 9; Laws 2016, LB1067, § 19.

#### **Cross References**

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

## (g) STUDENT DISCIPLINE

**79-262 School board or board of education; rules and standards; establish; distribute and post; review with county attorney.**

(1) The school board or board of education shall establish and promulgate rules and standards concerning student conduct which are reasonably necessary to carry out or to prevent interference with carrying out any educational function, if such rules and standards are clear and definite so as to provide clear notice to the student and his or her parent or guardian as to the conduct prescribed, prohibited, or required under the rules and standards. Notwithstanding any other provisions contained in the Student Discipline Act, the school board or board of education may by rule specify a particular action as a sanction for particular conduct. Any such action must be otherwise authorized by section 79-258, 79-265, or 79-267. Any such rule shall be binding on all students, school officials, board members, and hearing examiners. Expulsion may be specified as a sanction for particular conduct only if the school board or board of education finds that the type of conduct for which expulsion is specified has the potential to seriously affect the health, safety, or welfare of the student, other students, staff members, or any other person or to otherwise seriously interfere with the educational process. On or before August 1 of each year, all school boards shall annually review in collaboration with the county attorney of the county in which the principal office of the school district is located the rules and standards concerning student conduct adopted by the school board and the provisions of section 79-267 to define conduct which the principal or designee is required to report to law enforcement under section 79-293.

(2) All rules and standards established by school officials, other than the board, applicable to students shall not conflict with rules and standards adopted by the board. The board may change any rule or standard in accordance with policies which it may from time to time adopt.

(3) Rules or standards which form the basis for discipline, including the conduct required to be reported to law enforcement, shall be distributed to each student and his or her parent or guardian at the beginning of each school year, or at the time of enrollment if during the school year, and shall be posted in conspicuous places in each school during the school year. Changes in rules and standards shall not take effect until reasonable effort has been made to distribute such changes to each student and his or her parent or guardian.

**Source:** Laws 1976, LB 503, § 7; Laws 1983, LB 209, § 1; Laws 1994, LB 1250, § 13; R.S.1943, (1994), § 79-4,176; Laws 1996, LB 900, § 66; Laws 2018, LB1081, § 2.  
Effective date July 19, 2018.

**79-293 Nebraska Criminal Code violation; principal or principal's designee; notify law enforcement authorities; immunity.**

(1) The principal of a school or the principal's designee shall notify as soon as possible the appropriate law enforcement authorities, of the county or city in which the school is located, of any act of the student as provided in subsection (1) of section 79-262 which the principal or designee knows or suspects is a violation of the Nebraska Criminal Code.

(2) The principal, the principal's designee, or any other school employee reporting an alleged violation of the Nebraska Criminal Code shall not be civilly or criminally liable as a result of any report authorized by this section unless (a) such report was false and the person making such report knew or should have known it was false or (b) the report was made with negligent disregard for the truth or falsity of the report.

**Source:** Laws 1994, LB 1250, § 42; R.S.1943, (1994), § 79-4,205.01; Laws 1996, LB 900, § 97; Laws 2018, LB1081, § 3.  
Effective date July 19, 2018.

Cross References

Nebraska Criminal Code, see section 28-101.

(n) PART-TIME ENROLLMENT

**79-2,136 Part-time enrollment; school board; duties; section, how construed.**

Each school board shall allow the part-time enrollment of students who are residents of the school district pursuant to subsections (1) and (2) of section 79-215 and who are also enrolled in a private, denominational, or parochial school or in a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements and shall establish policies and procedures for such part-time enrollment. Such policies and procedures may include provisions permitting the part-time enrollment of such students who are not residents of such school districts to the extent permitted pursuant to section 79-215 and may require part-time students to follow school policies that apply to other students at any time the part-time student is present on school grounds or at a school-sponsored activity or athletic event. Part-time enrollment shall not entitle a student to transportation or transportation reimbursements pursuant to section 79-611. Nothing in this section shall be construed to exempt any student from the compulsory attendance provisions of sections 79-201 to 79-207.

**Source:** Laws 2006, LB 821, § 1; Laws 2010, LB1071, § 4; Laws 2018, LB1081, § 4.  
Effective date July 19, 2018.

(q) STATE SCHOOL SECURITY DIRECTOR

**79-2,144 State school security director; duties.**

The state school security director appointed pursuant to section 79-2,143 shall be responsible for providing leadership and support for safety and security for the public schools. Duties of the director include, but are not limited to:

(1) Collecting safety and security plans, required pursuant to rules and regulations of the State Department of Education relating to accreditation of schools, and other school security information from each school system in Nebraska. School districts shall provide the state school security director with the safety and security plans of the school district and any other security information requested by the director, but any plans or information submitted by a school district may be withheld by the department pursuant to subdivision (8) of section 84-712.05;

(2) Recommending minimum standards for school security on or before January 1, 2016, to the State Board of Education;

(3) Conducting an assessment of the security of each public school building, which assessment shall be completed by August 31, 2019;

(4) Identifying deficiencies in school security based on the minimum standards adopted by the State Board of Education and making recommendations to school boards for remedying such deficiencies;

(5) Establishing security awareness and preparedness tools and training programs for public school staff;

(6) Establishing research-based model instructional programs for staff, students, and parents to address the underlying causes for violent attacks on schools;

(7) Overseeing suicide awareness and prevention training in public schools pursuant to section 79-2,146;

(8) Establishing tornado preparedness standards which shall include, but not be limited to, ensuring that every school conducts at least two tornado drills per year;

(9) Responding to inquiries and requests for assistance relating to school security from private, denominational, and parochial schools; and

(10) Recommending curricular and extracurricular materials to assist school districts in preventing and responding to cyberbullying and digital citizenship issues.

**Source:** Laws 2014, LB923, § 2; Laws 2015, LB525, § 5; Laws 2017, LB512, § 8.

#### (r) PEDIATRIC CANCER SURVIVORS

##### **79-2,147 Legislative findings.**

The Legislature finds that:

(1) Pediatric cancer is the number one cause of death due to disease in the United States for children from birth to fourteen years of age;

(2) Nebraska ranks fifth in the United States in incidence of pediatric cancer;

(3) Eighty percent of children with the most common types of pediatric cancer will survive but the majority of pediatric cancer survivors will have chronic medical conditions for the rest of their lives; and

(4) Pediatric cancer survivors returning to school after successful treatment have specific cognitive, behavioral, physical, developmental, and social impairments that must be accommodated in order for the survivors to achieve their full educational potential.

**Source:** Laws 2015, LB511, § 1.

##### **79-2,148 Return-to-learn protocol; establishment.**

Each approved or accredited public, private, denominational, or parochial school shall establish a return-to-learn protocol for students returning to school after being treated for pediatric cancer. The return-to-learn protocol shall recognize that students who have been treated for pediatric cancer and returned to school may need informal or formal accommodations, modifications of curriculum, and monitoring by medical or academic staff.

**Source:** Laws 2015, LB511, § 2.

## (s) PREGNANT AND PARENTING STUDENTS

**79-2,149 Legislative findings.**

The Legislature finds and declares that:

(1) Pregnant and parenting students face enormous challenges to completing their education. The majority of young women who become pregnant in high school leave school which detrimentally impacts their financial, social, and educational future, as well as the future of their children;

(2) Schools have an obligation to keep pregnant and parenting students in school;

(3) Schools must remove overly restrictive or inflexible absence and leave policies so that pregnant students can attend prenatal medical appointments and parenting students can attend appointments for pediatric medical care, provide opportunities for students to make up school work or allow alternative education for students who become pregnant, and make accommodations for breastfeeding or milk expression; and

(4) Young women should not have to choose between completing their education and parenthood.

**Source:** Laws 2017, LB427, § 1.

**79-2,150 School board; duties.**

Beginning May 1, 2018, the school board of each school district shall adopt a written policy to be implemented at the start of the 2018-19 school year which provides for standards and guidelines to accommodate absences related to pregnancy and child care for pregnant and parenting students. Such policy shall include procedures and provisions in conformance with the minimum standards set forth in any model policy developed by the State Department of Education pursuant to section 79-2,151 or shall meet the minimum standards set forth in such section and may include any other procedures and provisions the school board deems appropriate.

**Source:** Laws 2017, LB427, § 2.

**79-2,151 State Department of Education; model policy; contents.**

On or before December 1, 2017, the State Department of Education may develop and distribute a model policy to encourage the educational success of pregnant and parenting students. At a minimum, such policy shall:

(1) Specifically identify procedures to anticipate and provide for student absences due to pregnancy and allow students to return to school and, if applicable, participate in extracurricular activities after pregnancy;

(2) Provide alternative methods to keep a pregnant or parenting student in school by allowing coursework to be accessed at home or accommodating tutoring visits, online courses, or a similar supplement to classroom attendance;

(3) Identify alternatives for accommodating lactation by providing students with private, hygienic spaces to express breast milk during the school day; and

(4) Establish a procedure for schools which do not have an in-school child care facility to assist student-parents by identifying child care providers for purposes of placing their children in child care facilities which, where possible,



participate in the quality rating and improvement system and meet all of the quality rating criteria for at least a step-three rating pursuant to the Step Up to Quality Child Care Act and which collaborate with the school.

**Source:** Laws 2017, LB427, § 3.

**Cross References**

Step Up to Quality Child Care Act, see section 71-1952.

**79-2,152 State Department of Education; powers.**

In addition to the development of a model policy, the State Department of Education may offer training for teachers, counselors, and administrators on each school district's policy adopted under section 79-2,150 and the rights of pregnant and parenting students to receive equal access to education.

**Source:** Laws 2017, LB427, § 4.

(t) STUDENT ONLINE PERSONAL PROTECTION ACT

**79-2,153 Act, how cited.**

Sections 79-2,153 to 79-2,155 shall be known and may be cited as the Student Online Personal Protection Act.

**Source:** Laws 2017, LB512, § 1.

**79-2,154 Terms, defined.**

For purposes of the Student Online Personal Protection Act:

(1) Covered information means personally identifiable information or material or information that is linked to personally identifiable information or material in any medium or format that is not publicly available and is any of the following:

(a) Created or gathered by or provided to an operator by a student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for elementary, middle, or high school purposes;

(b) Created by or provided to an operator by an employee or agent of an elementary school, middle school, high school, or school district for elementary, middle, or high school purposes; or

(c) Gathered by an operator through the operation of its site, service, or application for elementary, middle, or high school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information;

(2) Interactive computer service has the definition found in 47 U.S.C. 230, as such section existed on January 1, 2017;

(3) Elementary, middle, or high school purposes means purposes that are directed by or that customarily take place at the direction of an elementary school, a middle school, a high school, a teacher, or a school district or that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, collaboration between students, school personnel, or parents, and other purposes that are pursued for the use and benefit of the school or school district;

(4) Operator means, to the extent it is operating in this capacity, the operator of an Internet web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for elementary, middle, or high school purposes and was designed and marketed for elementary, middle, or high school purposes. This term does not include Internet web sites, online services, online applications, or mobile applications operated by a postsecondary institution with a physical presence in Nebraska; and

(5) Targeted advertising means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. It does not include advertising to a student at an online location based upon that student's current visit to that location, or in response to that student's request for information or feedback, without the retention of that student's online activities or requests over time for the purpose of targeting subsequent advertisements.

**Source:** Laws 2017, LB512, § 2.

**79-2,155 Operator; prohibited acts; duties; use or disclosure of covered information; applicability of section.**

(1) An operator shall not knowingly:

(a) Engage in targeted advertising on the operator's site, service, or application or targeted advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application for elementary, middle, or high school purposes;

(b) Use covered information, including persistent unique identifiers, created or gathered by the operator's site, service, or application to amass a profile about a student except in furtherance of elementary, middle, or high school purposes. Amassing a profile does not include the collection and retention of account information that remains under the control of the student, the student's parent or guardian, or the elementary school, middle school, or high school;

(c) Sell or rent a student's covered information. This subdivision does not apply to (i) the purchase, merger, or other type of acquisition of an operator by another entity if the operator or successor entity complies with this section regarding such covered information or (ii) a national assessment provider if the provider secures the express written consent of the student or parent or guardian of the student given in response to clear and conspicuous notice that access to covered information shall only be provided for purposes of obtaining employment, educational scholarships, financial aid, or postsecondary educational opportunities for such student; or

(d) Except as otherwise provided in subsection (3) of this section, disclose covered information unless the disclosure is made for the following purposes:

(i) In furtherance of the elementary, middle, or high school purpose of the site, service, or application, if the recipient of the covered information disclosed under this subdivision does not further disclose the covered information except to allow or improve operability and functionality of the operator's site, service, or application;

(ii) To ensure legal and regulatory compliance or protect against liability;

(iii) To respond to or participate in the judicial process;

(iv) To protect the safety or integrity of users of the site or other individuals or the security of the site, service, or application;

(v) For a school, educational, or employment purpose requested by the student or the student's parent or guardian if the covered information is not used or further disclosed for any other purpose; or

(vi) To a third party if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

(2) Nothing in this section shall prohibit the operator from using covered information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

(3) An operator shall:

(a) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information designed to protect that covered information from unauthorized access, destruction, use, modification, or disclosure; and

(b) Delete within a reasonable time period a student's covered information if the elementary school, middle school, high school, or school district requests deletion of covered information under the control of the elementary school, middle school, high school, or school district, unless a student or parent or guardian consents to the maintenance of the covered information.

(4) An operator may use or disclose covered information of a student under the following circumstances:

(a) If other provisions of federal or state law require the operator to disclose the covered information and the operator complies with the requirements of federal and state law in protecting and disclosing such covered information;

(b) As long as no covered information is used for advertising or to amass a profile on the student for purposes other than elementary, middle, or high school purposes, for legitimate research purposes as required by state or federal law and subject to the restrictions under applicable state and federal law or as allowed by state or federal law and in furtherance of elementary, middle, or high school purposes or postsecondary educational purposes; or

(c) To state or local educational agencies, including elementary schools, middle schools, high schools, and school districts, for elementary, middle, or high school purposes, as permitted by state or federal law.

(5) This section does not prohibit an operator from doing any of the following:

(a) Using covered information to improve educational products if such covered information is not associated with an identified student within the operator's site, service, or application or other sites, services, or applications owned by the operator;

(b) Using covered information that is not associated with an identified student to demonstrate or market the effectiveness of the operator's products or services;

(c) Sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications;

(d) Using recommendation engines to recommend to a student either of the following:

(i) Additional content relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or

(ii) Additional services relating to an educational, other learning, or employment opportunity purpose within an online site, service, or application if the recommendation is not determined in whole or in part by payment or other consideration from a third party; or

(e) Responding to a student's request for information or for feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

(6) This section does not:

(a) Limit the authority of a law enforcement agency to obtain any content or covered information from an operator as authorized by law or under a court order;

(b) Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes;

(c) Apply to general audience Internet web sites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications;

(d) Limit service providers from providing Internet connectivity to schools or a student and his or her family;

(e) Prohibit an operator of an Internet web site, online service, online application, or mobile application from marketing educational products directly to parents if the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section;

(f) Impose a duty upon a provider of an electronic store, network gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on those applications or software;

(g) Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this section by third-party content providers; or

(h) Prohibit a student from downloading, exporting, transferring, saving, or maintaining his or her own student data or documents.

**Source:** Laws 2017, LB512, § 3.

### ARTICLE 3

#### STATE DEPARTMENT OF EDUCATION

##### (a) DEPARTMENTAL STRUCTURE AND DUTIES

###### Section

79-301. State Department of Education; State Board of Education; Commissioner of Education; powers; duties; vacancy, absence, or incapacity; deputy commissioner; duties.

##### (b) COMMISSIONER OF EDUCATION

79-308. Teacher's institutes and conferences; organization; supervision; grant funding to implement evaluation model and training.

79-309.01. Commissioner of Education; duties; use of funds.

##### (c) STATE BOARD OF EDUCATION

79-318. State Board of Education; powers; duties.

79-319. State Board of Education; additional powers; enumerated.

79-321. Repealed. Laws 2017, LB512, § 41.

##### (a) DEPARTMENTAL STRUCTURE AND DUTIES

**79-301 State Department of Education; State Board of Education; Commissioner of Education; powers; duties; vacancy, absence, or incapacity; deputy commissioner; duties.**

(1) The State Department of Education provided for in Article VII, section 2, of the Constitution of Nebraska shall consist of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.

(2) The State Board of Education, acting as a unit, shall be the policy-forming, planning, and evaluative body for the state school program. Except in the appointment of a Commissioner of Education, the board shall deliberate and take action with the professional advice and counsel of the Commissioner of Education.

(3) The Commissioner of Education shall be the executive officer of the State Board of Education and the administrative head of the professional, technical, and clerical staff of the State Department of Education. The commissioner shall act under the authority of the State Board of Education. The commissioner shall have the responsibility for carrying out the requirements of law and of board policies, standards, rules, and regulations and for providing the educational leadership and services deemed necessary by the board for the proper conduct of the state school program. In the event of vacancy in office or the absence or incapacity of the Commissioner of Education, a deputy commissioner shall carry out any duties imposed by law upon the commissioner.

**Source:** Laws 1953, c. 320, § 1, p. 1053; Laws 1971, LB 220, § 1; R.S.1943, (1994), § 79-321; Laws 1996, LB 900, § 129; Laws 1997, LB 347, § 6; Laws 2015, LB525, § 6.

## Cross References

Surplus property of federal government, assist public schools in obtaining, see sections 81-910 to 81-912.

## (b) COMMISSIONER OF EDUCATION

**79-308 Teacher's institutes and conferences; organization; supervision; grant funding to implement evaluation model and training.**

(1) The Commissioner of Education shall organize institutes and conferences at such times and places as he or she deems practicable. He or she shall, as far as practicable, attend such institutes and conferences, provide proper instructors for the same, and in other ways seek to improve the efficiency of teachers and advance the cause of education in the state.

(2) The Legislature finds that (a) an educator-effectiveness system includes a quality evaluation system with the primary goal of improving instruction and learning in every school district and (b) school districts have an opportunity to receive training on the quality evaluation models.

(3) Beginning with the 2016-17 school year through the 2019-20 school year, school districts may apply to the State Department of Education for grant funding for a period of up to two years to implement an evaluation model for effective educators and to obtain the necessary training for administrators and teachers for such model.

(4) The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 1881, c. 78, subdivision VIII, § 2, p. 363; R.S.1913, § 6899; C.S.1922, § 6475; C.S.1929, § 79-1602; R.S.1943, § 79-1605; Laws 1949, c. 256, § 25, p. 700; R.S.1943, (1994), § 79-304; Laws 1996, LB 900, § 136; Laws 2015, LB525, § 7.

**79-309.01 Commissioner of Education; duties; use of funds.**

The Commissioner of Education shall use the separate accounting provided by the State Treasurer under subdivision (1)(b) of section 79-1035 to determine the amount that is attributable to income from solar or wind agreements on school lands. This amount shall provide funds for the grants described in section 79-308 through the 2019-20 school year.

For purposes of this section, agreement means any lease, easement, covenant, or other such contractual arrangement.

**Source:** Laws 2010, LB1014, § 1; Laws 2012, LB828, § 19; Laws 2015, LB525, § 8.

## (c) STATE BOARD OF EDUCATION

**79-318 State Board of Education; powers; duties.**

The State Board of Education shall:

(1) Appoint and fix the compensation of the Commissioner of Education;

(2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;

(3) Upon recommendation of the commissioner, appoint and fix the compensation of all new professional positions in the department, including any deputy commissioners;

(4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;

(5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner: (a) Provide supervisory and consultation services to the schools of the state; (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs; (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section; (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable; (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress; (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state; (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators; (h) approve certificated-employee evaluation policies and procedures developed by school districts and educational service units; and (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;

(6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that educational service units remain responsive to school

district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;

(7) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(8) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(9) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;

(10) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(11) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(12) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of public, private, denominational, or parochial school students; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of public, private, denominational, or parochial school students, when such vehicles are owned, operated, or owned and operated by any public, private, denominational, or parochial school or privately owned or operated under contract with any such school in this state, except for vehicles owned by individuals operating a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(13) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, devise of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so;

(14) Accept, in order to administer the Interstate Compact on Educational Opportunity for Military Children, any devise, donation, or bequest received by the State Department of Education pursuant to section 79-2206; and

(15) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and



conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

**Source:** Laws 1953, c. 320, § 8, p. 1056; Laws 1955, c. 306, § 1, p. 947; Laws 1959, c. 383, § 1, p. 1328; Laws 1967, c. 528, § 2, p. 1753; Laws 1969, c. 707, § 2, p. 2712; Laws 1969, c. 708, § 1, p. 2716; Laws 1971, LB 292, § 5; Laws 1974, LB 863, § 8; Laws 1977, LB 205, § 1; Laws 1979, LB 322, § 37; Laws 1981, LB 316, § 1; Laws 1981, LB 545, § 27; Laws 1984, LB 928, § 2; Laws 1984, LB 994, § 6; Laws 1986, LB 1177, § 36; Laws 1987, LB 688, § 11; Laws 1989, LB 15, § 1; Laws 1989, LB 285, § 141; Laws 1990, LB 980, § 34; Laws 1994, LB 858, § 3; R.S.1943, (1994), § 79-328; Laws 1996, LB 900, § 146; Laws 1999, LB 813, § 6; Laws 2009, LB549, § 18; Laws 2010, LB1071, § 5; Laws 2011, LB575, § 8; Laws 2012, LB782, § 148; Laws 2013, LB222, § 32; Laws 2015, LB525, § 9.

#### Cross References

Gifts, devises, and bequests, loans to needy students, see section 79-2,106.

Interstate Compact on Educational Opportunity for Military Children, see section 79-2201.

Private, denominational, or parochial schools, election not to meet approval or accreditation requirements, see section 79-1601 et seq.

### **79-319 State Board of Education; additional powers; enumerated.**

The State Board of Education has the authority to (1) provide for the education of and approve special educational facilities and programs provided in the public schools for children with disabilities, (2) act as the state's authority for the approval of all types of veterans educational programs and have jurisdiction over the administration and supervision of on-the-job and apprenticeship training, on-the-farm training, and flight training programs for veterans which are financially supported in whole or in part by the federal government, (3) supervise and administer any educational or training program established within the state by the federal government, except postsecondary education in approved colleges, (4) coordinate educational activities in the state that pertain to elementary and secondary education and such other educational programs as are placed by statute under the jurisdiction of the board, (5) administer any state or federal career and technical education laws and funding as directed, (6) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants, (7) publish, from time to time, directories of schools and educators,

pamphlets, curriculum guides, rules and regulations, handbooks on school constitution and other matters of interest to educators, and similar publications. Such publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing. The proceeds of such sale shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund which may be used by the State Department of Education for the purpose of printing and distributing further such publications on a nonprofit basis. Copies of such publications shall be provided to the Nebraska Publications Clearinghouse pursuant to section 51-413, and (8) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, rent or lease space outside the State Capitol.

**Source:** Laws 1953, c. 320, § 9, p. 1058; Laws 1959, c. 384, § 1, p. 1332; Laws 1961, c. 395, § 1, p. 1202; Laws 1963, c. 469, § 5, p. 1504; Laws 1972, LB 1284, § 20; Laws 1974, LB 863, § 9; Laws 1975, LB 359, § 2; Laws 1976, LB 733, § 1; Laws 1985, LB 417, § 1; Laws 1986, LB 997, § 7; R.S.1943, (1994), § 79-329; Laws 1996, LB 900, § 147; Laws 2009, LB549, § 19; Laws 2014, LB967, § 4; Laws 2017, LB512, § 9.

**79-321 Repealed. Laws 2017, LB512, § 41.**

**ARTICLE 4**

**SCHOOL ORGANIZATION AND REORGANIZATION**

(a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS  
FOR REORGANIZATION OF SCHOOL DISTRICTS

Section

- 79-401. Repealed. Laws 2018, LB377, § 87.
- 79-402. Repealed. Laws 2018, LB377, § 87.
- 79-403. Repealed. Laws 2018, LB377, § 87.
- 79-404. Repealed. Laws 2018, LB377, § 87.

(b) LEGAL STATUS, FORMATION, AND TERRITORY

- 79-406. Repealed. Laws 2018, LB377, § 87.
- 79-407. Class III school district; boundaries; body corporate; powers.
- 79-408. Class IV school district; boundaries; body corporate; powers.
- 79-410. Repealed. Laws 2018, LB377, § 87.
- 79-411. Repealed. Laws 2018, LB377, § 87.

(c) PETITION PROCESS FOR REORGANIZATION

- 79-413. School districts; creation from other school districts; change of boundaries; petition method; hearing; procedure; appeal.
- 79-415. Changes in boundaries; creation of new district; how initiated.
- 79-416. Repealed. Laws 2018, LB377, § 87.
- 79-417. Repealed. Laws 2018, LB377, § 87.
- 79-418. Changes in boundaries; creation of new school district; petition; requirements.
- 79-419. Districts; creation from other districts; petition; contents.
- 79-420. School districts; creation from other school districts; appointment of first school board; term; election of successors.
- 79-423. Repealed. Laws 2018, LB377, § 87.
- 79-424. Repealed. Laws 2018, LB377, § 87.
- 79-425. Repealed. Laws 2018, LB377, § 87.
- 79-426. Repealed. Laws 2018, LB377, § 87.

## SCHOOL ORGANIZATION AND REORGANIZATION

### Section

- 79-427. Repealed. Laws 2018, LB377, § 87.
- 79-431. Repealed. Laws 2018, LB377, § 87.

#### (d) REORGANIZATION OF SCHOOL DISTRICTS ACT

- 79-434. Reorganization of school districts; methods.
- 79-443. State committee; plan of reorganization; contents.
- 79-447. Plan of reorganization; special election; notice; contents; approval of plan.
- 79-451. New school district; state committee; appoint board; members; appointment; terms; duties.

#### (e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS

- 79-452. Repealed. Laws 2018, LB377, § 87.
- 79-453. Repealed. Laws 2018, LB377, § 87.
- 79-454. Repealed. Laws 2018, LB377, § 87.
- 79-455. Repealed. Laws 2018, LB377, § 87.

#### (f) FREEHOLDERS' PETITIONS

- 79-458. School district; tract of land set off from district; petition; conditions; procedure; appeal.

#### (g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION AND ANNEXATION OF SCHOOL DISTRICTS

- 79-470. Contract for instruction; limitation; dissolution.
- 79-472. Repealed. Laws 2018, LB377, § 87.
- 79-473. Class III school district; annexed school district territory; negotiation; criteria.
- 79-477. Repealed. Laws 2018, LB377, § 87.
- 79-478. Repealed. Laws 2018, LB377, § 87.

#### (h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS

- 79-479. Change of boundaries; order; transfer of assets and liabilities.
- 79-492. Repealed. Laws 2018, LB377, § 87.
- 79-493. Repealed. Laws 2018, LB377, § 87.
- 79-494. Repealed. Laws 2018, LB377, § 87.
- 79-495. Repealed. Laws 2018, LB377, § 87.

#### (i) DEPOPULATED DISTRICTS

- 79-499. Class III school district; membership requirements; cooperative programs; when required; plan; contract for services; effect; ballot issue; when; failure; effect.

#### (j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS

- 79-4,100. Repealed. Laws 2018, LB377, § 87.
- 79-4,101. Repealed. Laws 2018, LB377, § 87.
- 79-4,102. Repealed. Laws 2018, LB377, § 87.
- 79-4,103. Repealed. Laws 2018, LB377, § 87.
- 79-4,104. Repealed. Laws 2018, LB377, § 87.

#### (l) UNIFIED SYSTEM

- 79-4,108. Unified system; interlocal agreement; contents; application; procedure; effect.
- 79-4,109. Repealed. Laws 2018, LB377, § 87.
- 79-4,110. Repealed. Laws 2018, LB377, § 87.
- 79-4,111. Repealed. Laws 2018, LB377, § 87.

#### (n) LEARNING COMMUNITY REORGANIZATION ACT

- 79-4,119. Reorganization; provisions applicable.
- 79-4,121. Plan review; state committee; considerations.
- 79-4,122. Public hearings; record; notice.
- 79-4,123. Plan of reorganization; contents.
- 79-4,124. State committee; notification.
- 79-4,125. Disapproved plan; return to affected school districts.
- 79-4,126. School district in learning community; plan of reorganization; submitted to state committee; approved plan; procedure.

## Section

79-4,128. County clerk; duties; filings required.

79-4,129. State committee; duties; school board; appointments; terms; duties.

(a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS  
FOR REORGANIZATION OF SCHOOL DISTRICTS

**79-401 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-402 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-403 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-404 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

(b) LEGAL STATUS, FORMATION, AND TERRITORY

**79-406 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-407 Class III school district; boundaries; body corporate; powers.**

The territory within the corporate limits of each incorporated municipality in the State of Nebraska that is not in part within the boundaries of a learning community, together with such additional territory and additions to such municipality as may be added thereto, as declared by ordinances to be boundaries of such municipality, having a population of less than one hundred fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, including such adjacent territory as now is or hereafter may be attached for school purposes, shall constitute a Class III school district, except that nothing in this section shall be construed to change the boundaries of any school district that is a member of a learning community. The school district shall be a body corporate and possess all the usual powers of a corporation for public purposes and may sue and be sued, purchase, hold, and sell such personal and real property, and control such obligations as are authorized by law.

**Source:** Laws 1881, c. 78, subdivision XIV, § 1, p. 376; Laws 1883, c. 72, § 18, p. 296; Laws 1897, c. 69, § 1, p. 315; Laws 1909, c. 128, § 1, p. 472; R.S.1913, § 6948; Laws 1917, c. 128, § 1, p. 309; C.S.1922, § 6582; C.S.1929, § 79-2501; R.S.1943, § 79-2501; Laws 1949, c. 256, § 232, p. 767; Laws 1959, c. 382, § 4, p. 1325; Laws 1967, c. 541, § 1, p. 1782; Laws 1976, LB 383, § 1; Laws 1980, LB 743, § 3; Laws 1981, LB 16, § 2; Laws 1983, LB 465, § 1; Laws 1984, LB 908, § 1; Laws 1988, LB 1142, § 6; Laws 1988, LB 835, § 1; R.S.1943, (1994), § 79-801; Laws 1996, LB 900, § 156; Laws 1997, LB 345, § 9; Laws 1998, LB 629, § 2; Laws 2005, LB 126, § 13; Laws 2006, LB 1024, § 21; Referendum 2006, No. 422; Laws 2017, LB113, § 55; Laws 2018, LB377, § 14.

Operative date January 1, 2019.

## Cross References

Annexation by change of city boundaries, see section 79-473.

**79-408 Class IV school district; boundaries; body corporate; powers.**

The territory now or hereafter embraced within each incorporated city of the metropolitan class or city of the primary class in the State of Nebraska that is not in part within the boundaries of a learning community, such adjacent territory as now or hereafter may be included therewith for school purposes, and such territory not adjacent thereto as may have been added thereto by law shall constitute a Class IV school district, except that nothing in this section shall be construed to change the boundaries of any school district that is a member of a learning community. A Class IV school district shall be a body corporate and possess all the usual powers of a corporation for public purposes, may sue and be sued, and may purchase, hold, and sell such personal and real estate and contract such obligations as are authorized by law.

The title to all real or personal property owned by such school district shall, upon the organization of the school district, vest immediately in the school district so created. The board of education shall have exclusive control of all property belonging to the school district.

**Source:** Laws 1917, c. 225, § 1, p. 550; C.S.1922, § 6610; C.S.1929, § 79-2601; R.S.1943, § 79-2601; Laws 1947, c. 294, § 1(1), p. 907; Laws 1949, c. 256, § 244, p. 772; Laws 1963, c. 489, § 1, p. 1561; Laws 1971, LB 475, § 1; Laws 1988, LB 1142, § 7; R.S.1943, (1994), § 79-901; Laws 1996, LB 900, § 157; Laws 2005, LB 126, § 14; Laws 2006, LB 1024, § 22; Referendum 2006, No. 422; Laws 2011, LB509, § 15; Laws 2018, LB1081, § 5.

Effective date July 19, 2018.

**79-410 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-411 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

## (c) PETITION PROCESS FOR REORGANIZATION

**79-413 School districts; creation from other school districts; change of boundaries; petition method; hearing; procedure; appeal.**

(1) The State Committee for the Reorganization of School Districts created under section 79-435 may create a new school district from other districts or change the boundaries of any district that is not a member of a learning community upon receipt of petitions signed by sixty percent of the legal voters of each district affected. If the petitions contain signatures of at least sixty-five percent of the legal voters of each district affected, the state committee shall approve the petitions.

(2) Petitions proposing to change the boundaries of existing school districts that are not members of a learning community through the transfer of a parcel

of land, not to exceed six hundred forty acres, shall be approved by the state committee when the petitions involve the transfer of land between Class III or IV school districts or when there would be an exchange of parcels of land between Class III or IV school districts and the petitions have the approval of at least sixty-five percent of the school board of each affected district.

(3)(a) Petitions proposing to create a new school district or to change the boundary lines of existing school districts that are not members of a learning community, any of which involves the transfer of more than six hundred forty acres, shall, when signed by at least sixty percent of the legal voters in each district affected, be submitted to the state committee. The state committee shall, within forty days after receipt of the petition, hold one or more public hearings and review and approve or disapprove such proposal.

(b) If there is a bond election to be held in conjunction with the petition, the state committee shall hold the petition until the bond election has been held, during which time names may be added to or withdrawn from the petitions. The results of the bond election shall be certified to the state committee.

(c) If the bond election held in conjunction with the petition is unsuccessful, no further action on the petition is required. If the bond election is successful, within fifteen days after receipt of the certification of the bond election results, the state committee shall approve the petition and notify the county clerk to effect the changes in district boundary lines as set forth in the petitions.

(4) Any person adversely affected by the changes made by the state committee may appeal to the district court of any county in which the real estate or any part thereof involved in the dispute is located. If the real estate is located in more than one county, the court in which an appeal is first perfected shall obtain jurisdiction to the exclusion of any subsequent appeal.

(5) A signing petitioner may withdraw his or her name from a petition and a legal voter may add his or her name to a petition at any time prior to the end of the period when the petition is held by the state committee. Additions and withdrawals of signatures shall be by notarized affidavit filed with the state committee.

**Source:** Laws 1881, c. 78, subdivision I, § 4, p. 332; Laws 1883, c. 72, § 1, p. 288; Laws 1885, c. 79, § 1, p. 319; Laws 1889, c. 78, § 1, p. 539; Laws 1895, c. 58, § 1, p. 221; Laws 1901, c. 59, § 1, p. 429; Laws 1909, c. 117, § 1, p. 451; R.S.1913, § 6703; C.S.1922, § 6241; Laws 1923, c. 63, § 1, p. 190; Laws 1925, c. 177, § 1, p. 461; C.S.1929, § 79-104; Laws 1931, c. 145, § 1, p. 396; C.S.Supp.,1941, § 79-104; Laws 1943, c. 197, § 1(2), p. 659; R.S.1943, § 79-105; Laws 1949, c. 256, § 41, p. 706; Laws 1951, c. 276, § 2, p. 928; Laws 1953, c. 295, § 1, p. 999; Laws 1955, c. 315, § 3, p. 973; Laws 1957, c. 342, § 1, p. 1181; Laws 1959, c. 385, § 1, p. 1334; Laws 1963, c. 471, § 1, p. 1511; Laws 1963, c. 473, § 1, p. 1519; Laws 1963, c. 474, § 1, p. 1522; Laws 1963, c. 475, § 1, p. 1525; Laws 1963, c. 472, § 1, p. 1514; Laws 1967, c. 529, § 1, p. 1757; Laws 1971, LB 468, § 1; Laws 1984, LB 1098, § 1; Laws 1990, LB 259, § 5; Laws 1991, LB 511, § 11; Laws 1992, LB 245, § 16; Laws 1992, LB 719, § 1; Laws 1996, LB 604, § 4; R.S.1943, (1994), § 79-402; Laws 1996, LB 900, § 162; Laws 1996, LB 1050, § 2; Laws 1997, LB 806, § 6; Laws 1999, LB 272, § 30; Laws 2001, LB 302, § 1; Laws 2005, LB 126, § 17; Laws

2006, LB 1024, § 24; Referendum 2006, No. 422; Laws 2011, LB8, § 1; Laws 2011, LB235, § 2; Laws 2018, LB377, § 15.  
Operative date January 1, 2019.

**79-415 Changes in boundaries; creation of new district; how initiated.**

In addition to the petitions of legal voters pursuant to section 79-413, changes in boundaries and the creation of a new school district from other districts may be initiated and accepted by the school board or board of education of any district that is not a member of a learning community.

**Source:** Laws 1971, LB 468, § 2; Laws 1990, LB 259, § 6; Laws 1991, LB 511, § 12; Laws 1992, LB 245, § 17; R.S.1943, (1994), § 79-402.03; Laws 1996, LB 900, § 164; Laws 1997, LB 806, § 7; Laws 2005, LB 126, § 18; Laws 2006, LB 1024, § 25; Referendum 2006, No. 422; Laws 2018, LB377, § 16.  
Operative date January 1, 2019.

**79-416 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-417 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-418 Changes in boundaries; creation of new school district; petition; requirements.**

Petitions presented pursuant to section 79-415 shall be subject to the same requirements for content, hearings, notice, review, and appeal as petitions submitted pursuant to section 79-413, except that a petition presented pursuant to section 79-415 shall not become effective unless it is approved by a vote of a majority of the members of the State Committee for the Reorganization of School Districts. Any person adversely affected by the disapproval shall have the right of appeal under section 79-413.

**Source:** Laws 1971, LB 468, § 5; Laws 1984, LB 942, § 1; R.S.1943, (1994), § 79-402.06; Laws 1996, LB 900, § 167; Laws 1997, LB 806, § 8; Laws 1999, LB 272, § 32; Laws 2005, LB 126, § 20; Referendum 2006, No. 422; Laws 2018, LB377, § 17.  
Operative date January 1, 2019.

**79-419 Districts; creation from other districts; petition; contents.**

(1) When a new district is to be created from other districts as provided in section 79-413, the petition shall contain:

(a) A description of the proposed boundaries of the reorganized districts;

(b) A summary of the terms on which reorganization is to be made between the reorganized districts, which terms may include a provision for initial school board districts or wards within the proposed district for the appointment of the first school board and also for the first election as provided in section 79-451, which proposed initial school board districts or wards shall be determined by the State Committee for the Reorganization of School Districts taking into consideration population and valuation, and a determination of the terms of the board members first appointed to membership of the board of the newly reorganized district;

(c) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization;

(d) A separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization;

(e) An affidavit from the county clerk or election commissioner regarding the validity of the signatures on the petition; and

(f) Such other matters as the petitioners determine proper to be included.

(2) A petition under subsection (1) of this section may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under this section shall be maintained from the date of reorganization unless the legal voters served by the school vote by a majority vote for discontinuance of the school.

**Source:** Laws 1963, c. 475, § 2, p. 1528; R.R.S.1943, (1966), § 79-402.01; Laws 1971, LB 468, § 6; Laws 1985, LB 662, § 26; R.S.1943, (1994), § 79-402.07; Laws 1996, LB 900, § 168; Laws 1997, LB 806, § 9; Laws 1999, LB 272, § 33; Laws 2003, LB 394, § 4; Laws 2005, LB 126, § 21; Referendum 2006, No. 422; Laws 2018, LB377, § 18.

Operative date January 1, 2019.

**79-420 School districts; creation from other school districts; appointment of first school board; term; election of successors.**

Within thirty days after the creation of a new school district pursuant to sections 79-413 to 79-419, the State Committee for the Reorganization of School Districts shall appoint from among the legal voters of the new school district created the number of members necessary to constitute a school board of the class in which the new school district has been classified. Members of the first board shall be appointed so that their terms will expire in accord with provisions of law governing school districts of the class involved. The board so appointed shall organize at once in the manner prescribed by law. A reorganized school district shall be formed, organized, and have a governing board not later than June 1 following the last legal action, as prescribed in section 79-413, necessary to effect the changes in boundaries as set forth in the petition, although the physical reorganization of such reorganized school district may not take effect until the commencement of the following school year. At the next election following the establishment of the new school district and at subsequent elections, successors shall be elected in the manner provided by law for election of board members of the class to which the school district belongs.

**Source:** Laws 1963, c. 475, § 3, p. 1528; R.R.S.1943, (1966), § 79-402.02; Laws 1971, LB 468, § 8; Laws 1988, LB 520, § 1; R.S.1943, (1994), § 79-402.09; Laws 1996, LB 900, § 169; Laws 1997, LB 345, § 11; Laws 1999, LB 272, § 34; Laws 2015, LB525, § 10.

**79-423 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-424 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.



**79-425 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-426 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-427 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-431 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

(d) REORGANIZATION OF SCHOOL DISTRICTS ACT

**79-434 Reorganization of school districts; methods.**

Reorganization of school districts may be accomplished through or by means of any one or more of the following methods: (1) The creation of new districts; (2) the uniting of one or more established districts; (3) the subdivision of one or more established districts; (4) the transfer and attachment to an established district of a part of the territory of one or more districts; and (5) the dissolution or disorganization of an established district for any of the reasons specified by law.

**Source:** Laws 1949, c. 249, § 2, p. 674; Laws 1990, LB 259, § 13; Laws 1991, LB 511, § 22; Laws 1992, LB 245, § 27; R.S.1943, (1994), § 79-426.02; Laws 1996, LB 900, § 183; Laws 2005, LB 126, § 25; Referendum 2006, No. 422; Laws 2018, LB377, § 19.  
Operative date January 1, 2019.

**79-443 State committee; plan of reorganization; contents.**

After one or more public hearings have been held, the state committee may approve a plan or plans of reorganization. Such plan shall contain:

- (1) A description of the proposed boundaries of the reorganized districts;
- (2) A summary of the reasons for each proposed change, realignment, or adjustment of the boundaries;
- (3) A summary of the terms on which reorganization is to be made between the reorganized districts. Such terms shall include a provision for initial school board districts or wards within the proposed district, which proposed initial school board districts or wards shall be determined by the state committee taking into consideration population and valuation, a determination of the number of members to be appointed to the initial school board, and a determination of the terms of the board members first appointed to membership on the board of the newly reorganized district;
- (4) A separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization;
- (5) A statement of the findings with respect to the location of schools, the utilization of existing buildings, the construction of new buildings, and the transportation requirements under the proposed plan of reorganization. The plan may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under this section shall be maintained from the date of reorganization unless the legal

voters served by the school vote by a majority vote for discontinuance of the school;

(6) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization; and

(7) Such other matters as the state committee determines proper to be included.

**Source:** Laws 1949, c. 249, § 11, p. 677; Laws 1963, c. 480, § 1, p. 1546; Laws 1963, c. 479, § 6, p. 1540; Laws 1985, LB 662, § 28; R.S.1943, (1994), § 79-426.11; Laws 1996, LB 900, § 192; Laws 1997, LB 806, § 18; Laws 1999, LB 272, § 46; Laws 2005, LB 126, § 27; Referendum 2006, No. 422; Laws 2014, LB946, § 36; Laws 2018, LB377, § 20.

Operative date January 1, 2019.

**79-447 Plan of reorganization; special election; notice; contents; approval of plan.**

(1) Not less than thirty nor more than sixty days after the designation of a final approved plan under section 79-446, the proposition of the adoption or rejection of the proposed plan of reorganization shall be submitted at a special election to all the legal voters of districts within the county whose boundaries are in any manner changed by the plan of reorganization.

(2) Notice of the special election shall be given by the county clerk or election commissioner and shall be published in a legal newspaper of general circulation in the county at least ten days prior to the election. The election notice shall (a) state that the election has been called for the purpose of affording the legal voters an opportunity to approve or reject the plan of reorganization, (b) contain a description of the boundaries of the proposed district, and (c) contain a statement of the terms of the adjustment of property, debts, and liabilities applicable thereto.

(3) All ballots shall be prepared and the special election shall be held and conducted by the county clerk or election commissioner, and the expense of such election shall be paid by the county board or boards if more than one county is involved as provided in subsection (4) of this section. The county clerk or election commissioner shall use the duly appointed election board or appoint two judges and two clerks who shall be legal voters of the territory of the proposed school district. The election shall be held at a place or places within the proposed district determined by the county clerk or election commissioner to be convenient for the voters.

(4) If the proposed plan of reorganization involves a district under the jurisdiction of another county, the county clerk or election commissioner of the county which has the largest number of pupils residing in the proposed joint district shall give the notice required by subsection (2) of this section in a newspaper of general circulation in the territory of the proposed district and prepare the ballots and such election shall be held and conducted by the county clerk or election commissioner of each county involved in the proposed reorganization in accordance with the Election Act. Each county board shall bear a share of the total election expense in the same proportion that the number of legal voters residing in the proposed district in one county stands to the whole number of legal voters in the proposed district.

(5) In any election held as provided in this section, all districts of like class shall vote as a unit.

(6) Approval of the plan at the special election shall require a majority of all legal voters voting within each voting unit included in the proposed plan.

**Source:** Laws 1949, c. 249, § 15, p. 678; Laws 1951, c. 278, § 6, p. 941; Laws 1953, c. 297, § 1, p. 1003; Laws 1955, c. 311, § 6, p. 960; Laws 1957, c. 342, § 3, p. 1184; Laws 1963, c. 480, § 2, p. 1547; Laws 1963, c. 479, § 9, p. 1542; Laws 1972, LB 661, § 80; Laws 1994, LB 76, § 592; R.S.1943, (1994), § 79-426.15; Laws 1996, LB 900, § 196; Laws 1997, LB 345, § 13; Laws 1999, LB 272, § 50; Laws 2005, LB 126, § 28; Referendum 2006, No. 422; Laws 2018, LB377, § 21.

Operative date January 1, 2019.

#### Cross References

Election Act, see section 32-101.

### **79-451 New school district; state committee; appoint board; members; appointment; terms; duties.**

Within thirty days after the classification of the reorganized school districts by the county clerk under section 79-450, the state committee shall appoint from among the legal voters of each new school district created the number of school board members specified in the plan of reorganization. A reorganized school district shall be formed and organized and shall have a school board not later than April 1 following the last legal action, as prescribed in section 79-450, necessary to effect the changes in boundaries as set forth in the plan of reorganization, although the physical reorganization of such reorganized school district may not take effect until June 1. The first board shall be appointed on an at-large basis, and all boards shall be elected at large until such time as school districts are established as provided in section 32-554.

In appointing the first school board of a Class III school district, the terms of approximately one-half of the members shall expire on the first Thursday after the first Tuesday in January after the first even-numbered year following their appointment and the terms of the remaining members shall expire on the first Thursday after the first Tuesday in January after the second even-numbered year following their appointment.

The school board so appointed shall proceed at once to organize in the manner prescribed by law.

**Source:** Laws 1949, c. 249, § 18, p. 679; Laws 1955, c. 311, § 7, p. 962; R.R.S.1943, (1958), § 79-426.18; Laws 1963, c. 479, § 13, p. 1545; Laws 1973, LB 557, § 6; Laws 1974, LB 592, § 1; Laws 1988, LB 520, § 2; Laws 1991, LB 789, § 10; Laws 1991, LB 511, § 23; Laws 1992, LB 245, § 28; Laws 1994, LB 76, § 593; R.S.1943, (1994), § 79-426.19; Laws 1996, LB 900, § 200; Laws 1996, LB 967, § 3; Laws 1997, LB 345, § 14; Laws 1999, LB 272, § 53; Laws 2014, LB946, § 37; Laws 2018, LB377, § 22.

Operative date January 1, 2019.

### (e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS

#### **79-452 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-453 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-454 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-455 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

(f) FREEHOLDERS' PETITIONS

**79-458 School district; tract of land set off from district; petition; conditions; procedure; appeal.**

(1) Any freeholder or freeholders, person in possession or constructive possession as vendee pursuant to a contract of sale of the fee, holder of a school land lease under section 72-232, or entrant upon government land who has not yet received a patent therefor may file a petition on or before June 1 for all other years with a board consisting of the county assessor, county clerk, and county treasurer, asking to have any tract or tracts of land described in the petition set off from an existing school district in which the land is situated and attached to a different school district which is contiguous to such tract or tracts of land if:

(a)(i) The school district in which the land is situated is a Class III school district which has had an average daily membership in grades nine through twelve of less than sixty for the two consecutive school fiscal years immediately preceding the filing of the petition;

(ii) Such Class III school district has voted pursuant to section 77-3444 to exceed the maximum levy established pursuant to subdivision (2)(a) of section 77-3442, which vote is effective for the school fiscal year in which the petition is filed or for the following school fiscal year;

(iii) The high school in such Class III school district is within fifteen miles on a maintained public highway or maintained public road of another public high school; and

(iv) Neither school district is a member of a learning community; or

(b) Except as provided in subsection (7) of this section, the school district in which the land is situated, regardless of the class of school district, has approved a budget for the school fiscal year in which the petition is filed that will cause the combined levies for such school fiscal year, except levies for bonded indebtedness approved by the voters of such school district and levies for the refinancing of such bonded indebtedness, to exceed the greater of (i) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (ii) the maximum levy authorized by a vote pursuant to section 77-3444.

For purposes of determining whether a tract of land is contiguous, all petitions currently being considered by the board shall be considered together as a whole.

(2) The petition shall state the reasons for the proposed change and shall show with reference to the land of each petitioner: (a) That (i) the land described in the petition is either owned by the petitioner or petitioners or that he, she, or they hold a school land lease under section 72-232, are in possession

or constructive possession as vendee under a contract of sale of the fee simple interest, or have made an entry on government land but have not yet received a patent therefor and (ii) such tract of land includes all such contiguous land owned or controlled by each petitioner; (b) that the conditions of subdivision (1)(a) or (1)(b) of this section have been met; and (c) that such petition is approved by a majority of the members of the school board of the district to which such land is sought to be attached.

(3) The petition shall be verified by the oath of each petitioner. Notice of the filing of the petition and of the hearing on such petition before the board constituted as prescribed in subsection (1) or (4) of this section shall be given at least ten days prior to the date of such hearing by one publication in a legal newspaper of general circulation in each district and by posting a notice on the outer door of the schoolhouse in each district affected thereby, and such notice shall designate the territory to be transferred. Following the filing of a petition pursuant to this section, such board shall hold a public hearing on the petition and shall approve or disapprove the petition on or before July 15 following the filing of the petition based on a determination of whether the petitioner has complied with all requirements of this section. If such board approves the petition, such board shall change the boundaries of the school districts so as to set off the land described in the petition and attach it to such district pursuant to the petition with an effective date of August 15 following the filing of the petition, which actions shall cause such transfer to be in effect for levies set for the year in which such transfer takes effect.

(4) Petitions requesting transfers of property across county lines shall be addressed jointly to the county clerks of the counties concerned, and the petitions shall be acted upon by the county assessors, county clerks, and county treasurers of the counties involved as one board, with the county clerk of the county from which the land is sought to be transferred acting as chairperson of the board.

(5) Appeals may be taken from the action of such board or, when such board fails to act on the petition, on or before August 1 following the filing of the petition, to the district court of the county in which the land is located on or before August 10 following the filing of the petition, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county. If an appeal is taken from the action of the board approving the petition or failing to act on the petition, the transfer shall occur effective August 15 following the filing of the petition, which actions shall cause such transfer to be in effect for levies set for the year in which such transfer takes effect, unless action by the district court prevents such transfer.

(6) This section does not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(7) For school districts that have approved a budget for school fiscal year 2007-08 that will cause the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, to exceed the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, the school boards of such school districts may adopt a binding resolution stating that the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such

bonded indebtedness, for school fiscal year 2008-09 shall not exceed the greater of (i) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (ii) the maximum levy authorized by a vote pursuant to section 77-3444. On or before May 9, 2008, such binding resolutions shall be filed with the Auditor of Public Accounts and the county assessors, county clerks, and county treasurers for all counties in which the school district has territory. If such binding resolution is filed on or before May 9, 2008, land shall not be set off and attached to another district pursuant to subdivision (2)(b) of this section in 2008.

(8) Nothing in this section shall be construed to detach obligations for voter-approved bonds from any tract of land.

**Source:** Laws 1996, LB 900, § 207; Laws 1997, LB 710, § 3; Laws 1997, LB 806, § 22; Laws 1998, Spec. Sess., LB 1, § 11; Laws 1999, LB 272, § 58; Laws 2001, LB 797, § 10; Laws 2006, LB 1024, § 43; Laws 2007, LB219, § 1; Laws 2008, LB988, § 4; Laws 2018, LB377, § 23.

Operative date January 1, 2019.

#### Cross References

For appeal from action of county board on claim, see section 23-135.

### (g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION AND ANNEXATION OF SCHOOL DISTRICTS

#### **79-470 Contract for instruction; limitation; dissolution.**

(1) No district shall contract for the instruction of all of its pupils with a Class III, IV, or V school district for more than two consecutive years.

(2) The State Committee for the Reorganization of School Districts shall dissolve and attach to a neighboring school district or districts any school district which, for two consecutive years, contracts for the instruction of all of its pupils with a Class III, IV, or V school district.

(3) The dissolution of any school district pursuant to this section shall be effected in the manner prescribed in section 79-498. When such dissolution would create extreme hardships on the pupils or the school district affected, the State Board of Education may, on application by the school board of the school district, waive the dissolution of the school district on an annual basis.

(4) Nothing in this section shall be construed as an extension of the limitations on contracting for the instruction of the pupils of a school district contained in section 79-598.

**Source:** Laws 1969, c. 703, § 3, p. 2702; Laws 1973, LB 148, § 2; Laws 1987, LB 106, § 1; R.S.1943, (1994), § 79-603; Laws 1996, LB 900, § 219; Laws 1999, LB 272, § 60; Laws 2005, LB 126, § 33; Referendum 2006, No. 422; Laws 2018, LB377, § 24.

Operative date January 1, 2019.

#### **79-472 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

#### **79-473 Class III school district; annexed school district territory; negotiation; criteria.**

(1) If the territory annexed by a change of boundaries of a city or village which lies within a Class III school district as provided in section 79-407 has been part of a Class IV or Class V school district prior to such annexation, a merger of the annexed territory with the Class III school district shall become effective only if the merger is approved by a majority of the members of the school board of the Class IV or V school district and a majority of the members of the school board of the Class III school district within ninety days after the effective date of the annexation ordinance, except that a merger shall not become effective pursuant to this section if such merger involves a school district that is a member of a learning community.

(2) Notwithstanding subsection (1) of this section, when territory which lies within a Class III school district or which does not lie within a Class IV or V school district is annexed by a city or village pursuant to section 79-407, the affected school board of the city or village school district and the affected school board or boards serving the territory subject to the annexation ordinance shall meet within thirty days after the effective date of the annexation ordinance if neither school district is a member of a learning community and negotiate in good faith as to which school district shall serve the annexed territory and the effective date of any transfer. During the process of negotiation, the affected boards shall consider the following criteria:

(a) The educational needs of the students in the affected school districts;

(b) The economic impact upon the affected school districts;

(c) Any common interests between the annexed or platted area and the affected school districts and the community which has zoning jurisdiction over the area; and

(d) Community educational planning.

If no agreement has been reached within ninety days after the effective date of the annexation ordinance, the territory shall transfer to the school district of the annexing city or village ten days after the expiration of such ninety-day period unless an affected school district petitions the district court within the ten-day period and obtains an order enjoining the transfer and requiring the boards of the affected school districts to continue negotiation. The court shall issue the order upon a finding that the affected board or boards have not negotiated in good faith based on one or more of the criteria listed in this subsection. The district court shall require no bond or other surety as a condition for any preliminary injunctive relief. If no agreement is reached after such order by the district court and additional negotiations, the annexed territory shall become a part of the school district of the annexing city or village.

(3) Whenever an application for approval of a final plat or replat is filed for territory which lies within the zoning jurisdiction of a city of the first or second class and does not lie within the boundaries of a Class IV or V school district, the boundaries of a school district that is a member of a learning community, the boundaries of any county in which a city of the metropolitan class is located, or the boundaries of any county that has a contiguous border with a city of the metropolitan class, the affected school board of the school district within the city of the first or second class or its representative and the affected board or boards serving the territory subject to the final plat or replat or their representative shall meet within thirty days after such application and negotiate in good faith as to which school district shall serve the platted or replatted

territory and the effective date of any transfer based upon the criteria prescribed in subsection (2) of this section.

If no agreement has been reached prior to the approval of the final plat or replat, the territory shall transfer to the school district of the city of the first or second class upon the filing of the final plat unless an affected school district petitions the district court within ten days after approval of the final plat or replat and obtains an order enjoining the transfer and requiring the affected boards to continue negotiation. The court shall issue the order upon a finding that the affected board or boards have not negotiated in good faith based on one or more of the criteria listed in subsection (2) of this section. The district court shall require no bond or other surety as a condition for any preliminary injunctive relief. If no agreement is reached after such order by the district court and additional negotiations, the platted or replatted territory shall become a part of the school district of the city of the first or second class.

For purposes of this subsection, plat and replat apply only to (a) vacant land, (b) land under cultivation, or (c) any plat or replat of land involving a substantive change in the size or configuration of any lot or lots.

(4) Notwithstanding any other provisions of this section, all negotiated agreements relative to boundaries or to real or personal property of school districts reached by the affected school boards shall be valid and binding, except that such agreements shall not be binding on reorganization plans pursuant to the Learning Community Reorganization Act.

**Source:** Laws 1996, LB 900, § 222; Laws 1997, LB 345, § 16; Laws 2005, LB 126, § 34; Laws 2006, LB 1024, § 48; Referendum 2006, No. 422; Laws 2018, LB377, § 25.  
Operative date January 1, 2019.

#### Cross References

Learning Community Reorganization Act, see section 79-4,117.

**79-477 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-478 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

#### (h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS

##### **79-479 Change of boundaries; order; transfer of assets and liabilities.**

(1)(a) Beginning January 1, 1992, any school district boundaries changed by the means provided by Nebraska law, but excluding the method provided by sections 79-407 and 79-473 to 79-475, shall be made only upon an order issued by the State Committee for the Reorganization of School Districts or county clerk.

(b) The order issued by the state committee shall be certified to the county clerk of each county in which boundaries are changed and shall also be certified to the State Department of Education. Whenever the order changes the boundaries of a school district due to the transfer of land, the county assessor, the Property Tax Administrator, and the State Department of Education shall be provided with the legal description and a map of the parcel of land which is transferred. Such order shall be issued no later than June 1 and



shall have an effective date no later than August 1 of the same year. For purposes of determining school district counts pursuant to sections 79-524 and 79-578 and calculating state aid allocations pursuant to the Tax Equity and Educational Opportunities Support Act, any change in school district boundaries with an effective date between June 1 and August 1 of any year shall be considered effective July 1 of such year.

(2) Unless otherwise provided by state law or by the terms of a reorganization plan or petition which is consistent with state law, all assets, including budget authority as provided in sections 79-1023 to 79-1030, and liabilities, except bonded obligations, of school districts merged, dissolved, or annexed shall be transferred to the receiving district or districts on the basis of the proportionate share of assessed valuation received at the time of reorganization.

**Source:** Laws 1996, LB 604, § 3; Laws 1996, LB 900, § 228; Laws 1997, LB 347, § 13; Laws 1997, LB 806, § 23; Laws 1999, LB 272, § 62; Laws 1999, LB 813, § 8; Laws 2003, LB 394, § 5; Laws 2005, LB 126, § 35; Laws 2006, LB 1024, § 50; Referendum 2006, No. 422; Laws 2018, LB377, § 26.  
Operative date January 1, 2019.

#### Cross References

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

**79-492 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-493 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-494 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-495 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

#### (i) DEPOPULATED DISTRICTS

**79-499 Class III school district; membership requirements; cooperative programs; when required; plan; contract for services; effect; ballot issue; when; failure; effect.**

(1) If the fall school district membership or the average daily membership of an existing Class III school district shows fewer than thirty-five students in grades nine through twelve, the district shall submit a plan for developing cooperative programs with other high schools, including the sharing of curriculum and certificated and noncertificated staff, to the State Committee for the Reorganization of School Districts. The cooperative program plan shall be submitted by the school district by September 1 of the year following such fall school district membership or average daily membership report. A cooperative program plan shall not be required if there is no high school within fifteen miles from such district on a reasonably improved highway. The state committee shall review the plan and provide advice and communication to such school district and other high schools.

(2) If for two consecutive years the fall school district membership, or for two consecutive years the average daily membership, of an existing Class III school

district is fewer than twenty-five pupils in grades nine through twelve as determined by the Commissioner of Education or if for one year an existing Class III school district contracts with a neighboring school district or districts to provide educational services for all of its pupils in grades nine through twelve, such school district shall, except as provided in subsection (3) or (4) of this section, be dissolved pursuant to the procedures described in subdivision (4)(b) of this section through the order of the state committee if the high school is within fifteen miles on a reasonably improved highway of another high school.

This subsection does not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(3) Any Class III school district which has a fall school district membership or an average daily membership of fewer than twenty-five students in grades nine through twelve may contract with another school district to provide educational services for its pupils in grades nine through twelve. Such contract may continue for a period not to exceed one year. At the end of such one-year period, the school district may resume educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students. If the school district has not achieved such fall school district membership or average daily membership, it shall be dissolved pursuant to the procedures described in subdivision (4)(b) of this section by order of the state committee entered after thirty days' notice to the district but without a hearing, notwithstanding the distance on a reasonably improved highway to the nearest school district conducting a high school.

(4)(a) Any Class III school district maintaining the only public high school in the county with a fall school district membership or an average daily membership of fewer than twenty-five students in grades nine through twelve shall be subject to this subsection until such school district reaches a fall school district membership or average daily membership of at least thirty-five students or fewer than fifteen students in grades nine through twelve or dissolves. Such school district may continue to operate the high school if:

(i) The plan submitted pursuant to subsection (1) of this section provides a broad-based curriculum as determined by the state committee; and

(ii) At a districtwide election held the second Tuesday of November by whatever means the county conducts balloting, in the second consecutive school year that the fall school district membership for grades nine through twelve is fewer than twenty-five students, a majority of voters approve a ballot issue to continue to operate the high school for the immediately following school year. If such ballot issue succeeds in the initial election, the school board shall annually determine if such a districtwide election is necessary for each subsequent year that the school district is subject to this subsection, except that such school board shall hold such districtwide election if four years have passed since the last election pursuant to this section and the school district has remained subject to this subsection.

(b) If such ballot issue as provided in subdivision (4)(a)(ii) of this section fails, or if a school district falls within the provisions of subsection (2) or (3) of this section, the state committee shall dissolve the school district and attach the territory to other school districts based on the preferences of each landowner if such preference is provided in the time and manner required by the state

committee and would transfer such parcels to a school district with a boundary contiguous to the school district being dissolved. Landowners submitting such preferences shall sign a statement that the district of preference is the district which children who might reside on the property, at the time of the dissolution or in the future, would be expected to attend. For property for which a preference is not provided in the time and manner required by the state committee, the state committee shall transfer such property to one or more of the school districts with boundaries contiguous to the district being dissolved in a manner that will best serve children who might reside on such property, at the time of the dissolution or in the future, and that will, to the extent possible, create compact and contiguous districts.

(c) This subsection shall not apply to any school district if the fall school district membership or an average daily membership falls to fewer than fifteen students in grades nine through twelve.

(5) For purposes of this section, when calculating fall school district membership or average daily membership, a resident school district as defined in section 79-233 shall not count students attending an option district as defined in such section and a Class III school district shall not count foreign exchange students and nonresident students who are wards of the court or state.

**Source:** Laws 1991, LB 511, § 55; Laws 1992, LB 245, § 53; R.S.1943, (1994), § 79-516.08; Laws 1996, LB 900, § 248; Laws 1996, LB 1050, § 6; Laws 1999, LB 272, § 70; Laws 2005, LB 126, § 36; Referendum 2006, No. 422; Laws 2015, LB477, § 1; Laws 2018, LB377, § 27; Laws 2018, LB1070, § 1.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB377, section 27, with LB1070, section 1, to reflect all amendments.

**Note:** Changes made by LB1070 became effective July 19, 2018. Changes made by LB377 became operative January 1, 2019.

#### Cross References

**Contracting for instruction**, general provisions, see section 79-598.

### (j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS

**79-4,100 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-4,101 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-4,102 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-4,103 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-4,104 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

### (l) UNIFIED SYSTEM

**79-4,108 Unified system; interlocal agreement; contents; application; procedure; effect.**

(1) Unified system means two or more Class III school districts participating in an interlocal agreement under the Interlocal Cooperation Act with approval

from the State Committee for the Reorganization of School Districts. The interlocal agreement shall provide:

- (a) For a minimum term of three school years;
- (b) That all property tax and state aid resources shall be shared by the unified system;
- (c) That a board composed of school board members, with at least one school board member from each district, shall determine the general fund levy, within the limitations placed on school districts and multiple-district school systems pursuant to section 77-3442, to be applied in all participating districts and shall determine the distribution of property tax and state aid resources within the unified system. For purposes of section 77-3442, the multiple-district school system shall include all of the districts participating in the unified system;
- (d) That certificated staff will be employees of the unified system. For any certificated staff employed by the unified system, tenure and seniority as of the effective date of the interlocal agreement shall be transferred to the unified system and tenure and seniority provisions shall continue in the unified system except as provided in sections 79-850 to 79-858. If a district withdraws from the unified system or if the interlocal agreement expires and is not renewed, certificated staff employed by a participating district immediately prior to the unification shall be reemployed by the original district and tenure and seniority as of the effective date of the withdrawal or expiration shall be transferred to the original district. The certificated staff hired by the unified system but not employed by a participating district immediately prior to the unification shall be subject to the reduction-in-force policy of the unified system;
- (e) That the participating districts shall pay obligations of the unified system pursuant to sections 79-850 to 79-858 on a pro rata basis based on the adjusted valuations if a district withdraws from the unified system or if the interlocal agreement expires and is not renewed; and
- (f) The permissible method or methods for accomplishing the partial or complete termination of the interlocal agreement and for disposing of assets and liabilities upon such partial or complete termination.

Additional provisions in the interlocal agreement shall be determined by the participating districts and shall encourage cooperation within the unified system.

(2) Application for unification shall be made to the state committee. The application shall contain a copy of the interlocal agreement signed by the president of each participating school board. The state committee shall approve or disapprove applications for unification within forty days after receipt of the application. If the interlocal agreement complies with subsection (1) of this section and all school boards of the participating districts have approved the interlocal agreement, the state committee shall approve the application. Unification agreements shall be effective on June 1 following approval from the state committee for status as a unified system or on the date specified in the interlocal agreement, except that the date shall be on or after June 1 and on or before September 1 for a specified year. The board established in the interlocal agreement may begin meeting any time after the application has been approved by the state committee.

(3) Upon granting the application for unification, the State Department of Education shall recognize the unified system as a single Class III district for

state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. Except as otherwise required by the department, the unified system shall submit a single report document for each of the reports required of school districts pursuant to Chapter 79 and shall submit a single budget document pursuant to the Nebraska Budget Act and sections 13-518 to 13-522.

(4) The school districts participating in a unified system shall retain their separate identities for all purposes except those specified in this section, and participation in a unified system shall not be considered a reorganization.

**Source:** Laws 1998, LB 1219, § 9; Laws 1999, LB 813, § 10; Laws 2001, LB 797, § 12; Laws 2005, LB 126, § 38; Referendum 2006, No. 422; Laws 2008, LB988, § 5; Laws 2010, LB711, § 1; Laws 2010, LB1071, § 6; Laws 2018, LB377, § 28.  
Operative date January 1, 2019.

#### Cross References

Interlocal Cooperation Act, see section 13-801.  
Nebraska Budget Act, see section 13-501.

**79-4,109 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-4,110 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-4,111 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

#### (n) LEARNING COMMUNITY REORGANIZATION ACT

##### **79-4,119 Reorganization; provisions applicable.**

Any reorganization of school districts that affects a school district that is a member of a learning community, except dissolutions pursuant to section 79-470, 79-498, 79-499, or 79-598, shall only be accomplished pursuant to the Learning Community Reorganization Act.

**Source:** Laws 2006, LB 1024, § 30; Laws 2016, LB1067, § 20.

##### **79-4,121 Plan review; state committee; considerations.**

In the review of a plan for the reorganization of school districts pursuant to the Learning Community Reorganization Act, the state committee shall give due consideration to (1) the educational needs of pupils in the learning community, (2) economies in administration costs, (3) the future use of existing satisfactory school buildings, sites, and play fields, (4) the convenience and welfare of pupils, (5) transportation requirements, (6) the equalization of the educational opportunity of pupils, (7) the amount of outstanding indebtedness of each district and proposed disposition thereof, (8) the equitable adjustment of all property, debts, and liabilities among the districts involved, (9) any additional statutory requirements for learning community organization, and (10) any other matters which, in its judgment, are of importance.

**Source:** Laws 2006, LB 1024, § 32; Laws 2016, LB1067, § 21.

##### **79-4,122 Public hearings; record; notice.**

Before any plan of reorganization is approved by the state committee pursuant to the Learning Community Reorganization Act, the state committee shall hold one or more public hearings. At such hearings, the state committee shall hear any and all persons interested with respect to the areas of consideration listed in section 79-4,121. The state committee shall keep a record of all hearings in the formulation or approval of plans for the reorganization of school districts. Notice of such public hearings of the state committee shall be given by publication in a legal newspaper of general circulation in the county or counties in which the affected districts are located at least ten days prior to such hearing.

**Source:** Laws 2006, LB 1024, § 33; Laws 2016, LB1067, § 22.

**79-4,123 Plan of reorganization; contents.**

After one or more public hearings have been held, the state committee may approve a plan or plans of reorganization pursuant to the Learning Community Reorganization Act. Such plan shall contain:

(1) A description of the proposed boundaries of the reorganized districts and a designation of the class for each district;

(2) A summary of the reasons for each proposed change, realignment, or adjustment of the boundaries which shall include, but not be limited to, an explanation of how the plan complies with any statutory requirements for learning community organization and an assurance that the plan does not increase the geographic size of any school district that has more than twenty-five thousand formula students for the most recent certification of state aid pursuant to section 79-1022;

(3) A summary of the terms on which reorganization is to be made between the reorganized districts. Such terms shall include a provision for initial school board districts or wards within the proposed district, which proposed initial school board districts or wards shall be determined by the state committee taking into consideration population and valuation, a determination of the number of members to be appointed to the initial school board, and a determination of the terms of the board members first appointed to membership on the board of the newly reorganized district;

(4) A statement of the findings with respect to the location of schools, the utilization of existing buildings, the construction of new buildings, and the transportation requirements under the proposed plan of reorganization;

(5) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization; and

(6) Such other matters as the state committee determines proper to be included.

**Source:** Laws 2006, LB 1024, § 34; Laws 2014, LB946, § 38; Laws 2016, LB1067, § 23; Laws 2018, LB377, § 29.

Operative date January 1, 2019.

**79-4,124 State committee; notification.**

The state committee shall, within thirty days after holding the hearings provided for in section 79-4,122, notify the affected school districts whether or not it approves or disapproves such plan or plans.

**Source:** Laws 2006, LB 1024, § 35; Laws 2016, LB1067, § 24.

**79-4,125 Disapproved plan; return to affected school districts.**

If the state committee disapproves the plan pursuant to the Learning Community Reorganization Act, it shall be considered a disapproved plan and returned to the affected school districts as a disapproved plan.

**Source:** Laws 2006, LB 1024, § 36; Laws 2007, LB641, § 6; Laws 2016, LB1067, § 25.

**79-4,126 School district in learning community; plan of reorganization; submitted to state committee; approved plan; procedure.**

(1) The school board of any school district in a learning community may propose a plan of reorganization. When at least sixty percent of the members of the school board of each affected school district vote to approve the plan, such plan may be submitted to the state committee. When any area is added or removed from any school district in a learning community as part of a plan, such school district shall be deemed an affected school district.

(2) When a plan of reorganization or any part thereof has been approved by the state committee pursuant to the Learning Community Reorganization Act, it shall be designated as the final approved plan and shall be submitted to the county clerk pursuant to section 79-4,128 and to school boards of the affected school districts.

**Source:** Laws 2006, LB 1024, § 37; Laws 2007, LB641, § 7; Laws 2016, LB1067, § 26.

**79-4,128 County clerk; duties; filings required.**

If the plan of reorganization is approved by the state committee pursuant to the Learning Community Reorganization Act, the county clerk shall proceed to cause the changes, realignment, and adjustment of districts to be carried out as provided in the plan. The county clerk shall classify the school districts according to the plan of reorganization. He or she shall also file certificates with the county assessor, county treasurer, learning community coordinating council, and state committee showing the boundaries of the various districts under the approved plan of reorganization.

**Source:** Laws 2006, LB 1024, § 39; Laws 2007, LB641, § 8; Laws 2016, LB1067, § 27.

**79-4,129 State committee; duties; school board; appointments; terms; duties.**

(1) Within thirty days after the classification of the reorganized school districts by the county clerk under section 79-4,128, the state committee shall appoint from among the legal voters of each new school district created the number of school board members specified in the plan of reorganization. A reorganized school district shall be formed and organized and shall have a school board not later than April 1 following the last legal action, as prescribed in section 79-4,128, necessary to effect the changes in boundaries as set forth in the plan of reorganization, although the physical reorganization of such reorganized school district shall take effect July 1 following the classification of the reorganized school districts under section 79-4,128. The first board shall be appointed on an at-large basis, and all boards shall be elected at large until such time as election districts are established as provided in section 32-554.

(2) In appointing the first school board of a Class III school district, the terms of approximately one-half of the members shall expire on the first Thursday after the first Tuesday in January after the first even-numbered year following their appointment and the terms of the remaining members shall expire on the first Thursday after the first Tuesday in January after the second even-numbered year following their appointment. Thereafter all Class III district school boards shall be elected to terms of four years.

(3) In appointing the first school board of a Class IV school district, the members shall be appointed so that the terms of three members shall expire on the third Monday in May of the first odd-numbered year following their appointment and the terms of four members shall expire on the third Monday in May of the second odd-numbered year following their appointment. Thereafter all Class IV district school boards shall be elected to terms of four years.

(4) In appointing the first school board of a Class V school district after a reorganization under this section with a nine-member board serving terms of four years, the terms of the members shall expire as provided in section 32-545. All Class V district school boards shall be elected to terms of four years.

(5) The school boards appointed under this section shall proceed at once to organize in the manner prescribed by law.

**Source:** Laws 2006, LB 1024, § 40; Laws 2013, LB125, § 5; Laws 2014, LB946, § 39; Laws 2018, LB377, § 30.  
Operative date January 1, 2019.

**ARTICLE 5**

**SCHOOL BOARDS**

(a) SCHOOL BOARD POWERS

Section

- 79-501. School board; property; maintenance; hiring of superintendent, teachers, and personnel.
- 79-506. Insurance coverage; authorized.
- 79-519. Repealed. Laws 2018, LB377, § 87.
- 79-523. Repealed. Laws 2018, LB377, § 87.
- 79-524. Class III or IV school district; permanent and continuing census.

(b) SCHOOL BOARD DUTIES

- 79-525. Class III or IV school district; school board; duty to maintain schoolhouse; accounts.
- 79-526. Class III or IV school district; school board; schools; supervision and control; powers.
- 79-527.01. Repealed. Laws 2017, LB512, § 41.
- 79-528. Reports; filing requirements; contents.
- 79-529. Failure to file annual financial report; use of other reports.

(c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

- 79-540. Repealed. Laws 2018, LB377, § 87.
- 79-541. Repealed. Laws 2018, LB377, § 87.
- 79-542. Repealed. Laws 2018, LB377, § 87.
- 79-547. Class III school district; school board; board of education; members; number.
- 79-548. Repealed. Laws 2018, LB377, § 87.
- 79-550. Class III school district elections; change number of board members; resolution; contents; change manner of election.
- 79-553. Repealed. Laws 2018, LB377, § 87.



## Section

## (d) SCHOOL BOARD MEETINGS AND PROCEDURES

- 79-554. Class III school district; school board; quorum; meetings; open to public.  
 79-556. Repealed. Laws 2018, LB377, § 87.  
 79-557. Repealed. Laws 2018, LB377, § 87.  
 79-558. Repealed. Laws 2018, LB377, § 87.  
 79-559. Class III or IV school district; school board or board of education; student member; term; qualifications.  
 79-563. Repealed. Laws 2018, LB377, § 87.

## (e) SCHOOL BOARD OFFICERS

- 79-564. Class III school district; school board; officers; elect.  
 79-565. Repealed. Laws 2018, LB377, § 87.  
 79-568. Repealed. Laws 2018, LB377, § 87.  
 79-569. Class III or IV school district; president; powers and duties.  
 79-570. Class III or IV school district; president; meetings; maintenance of order.  
 79-572. Class III or IV school district; president; actions for or against district; appearance required.  
 79-576. Class III or IV school district; secretary; duty as clerk of board.  
 79-577. Class III or IV school district; secretary; books, records, and reports; duty to preserve.  
 79-578. Class III or IV school district; secretary; school census; duty to take; time allowed.  
 79-579. Class III or IV school district; district officers; disputes over orders; county attorney; duty to investigate; mandamus.  
 79-580. Class III school district; board of education; claims against; record of proceedings; secretary; duty to publish.  
 79-581. Class III school district; publication of claims and summary of proceedings; noncompliance by secretary; penalty.  
 79-585. Repealed. Laws 2018, LB377, § 87.  
 79-586. Class III or IV school district; treasurer; bond or insurance; filing; failure to give; effect.  
 79-587. Class III or IV school district; treasurer; district funds; receipt and disbursement.  
 79-588. Class III or IV school district; treasurer; records and reports required; delivery upon expiration of office.  
 79-594. Class III or IV school district; superintendent; appointment; salary; term.

## (f) PROVIDING EDUCATION OUTSIDE THE DISTRICT

- 79-598. Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.  
 79-5,104. Class III school district; tuition of pupil attending school outside of district; payment, when.  
 79-5,107. Repealed. Laws 2018, LB377, § 87.  
 79-5,108. Repealed. Laws 2018, LB377, § 87.

## (a) SCHOOL BOARD POWERS

**79-501 School board; property; maintenance; hiring of superintendent, teachers, and personnel.**

The school board or board of education of a Class III or IV school district shall have the care and custody of the schoolhouse and other property of the district and shall have authority to hire a superintendent and the required number of teachers and other necessary personnel.

**Source:** Laws 1881, c. 78, subdivision V, § 9, p. 354; R.S.1913, § 6789; C.S.1922, § 6330; C.S.1929, § 79-509; R.S.1943, § 79-509; Laws 1949, c. 256, § 80, p. 719; Laws 1971, LB 292, § 8; R.S.1943,

(1994), § 79-441; Laws 1996, LB 900, § 254; Laws 2018, LB377, § 31.

Operative date January 1, 2019.

**79-506 Insurance coverage; authorized.**

The school board or board of education of any school district may permit its members to participate in the school district's hospitalization, medical, surgical, accident, sickness, or term life insurance coverage or any one or more of such coverages. A board member electing to participate in the insurance program of the school district shall pay both the employee and the employer portions of the premium for such coverage.

A school board or board of education which opts to permit its members to participate in insurance coverage under this section shall report quarterly at a board meeting the board members who have elected such coverage. Such a report shall be made available in the school district office for review by the public upon request.

**Source:** Laws 2008, LB850, § 1; Laws 2018, LB377, § 32.

Operative date January 1, 2019.

**79-519 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-523 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-524 Class III or IV school district; permanent and continuing census.**

The school board of any Class III or IV school district shall establish a permanent and continuing census or enumeration of school children in the school district. The list in writing of the names of the children and taxpayers shall not be required to be reported, but the names of all of the children belonging to such school district, from birth through twenty years of age, shall instead be kept in a depository maintained by such school district and subject to inspection at all times. Such record shall not or need not include the names of all the taxpayers in the district.

**Source:** Laws 1996, LB 900, § 277; Laws 1999, LB 272, § 72; Laws 2018, LB377, § 33.

Operative date January 1, 2019.

(b) SCHOOL BOARD DUTIES

**79-525 Class III or IV school district; school board; duty to maintain schoolhouse; accounts.**

The school board or board of education of a Class III or IV school district shall (1) provide the necessary appendages for the schoolhouse, (2) keep the same in good condition and repair during the time school is taught in the schoolhouse, and (3) keep an accurate account of all expenses incurred. Such account shall be prepared by the secretary, audited by the president and treasurer, and, on their written order, paid out of the general school fund.

**Source:** Laws 1881, c. 78, subdivision IV, § 13, p. 349; R.S.1913, § 6775; C.S.1922, § 6316; C.S.1929, § 79-413; R.S.1943, § 79-415; Laws

1949, c. 256, § 79, p. 719; R.S.1943, (1994), § 79-440; Laws 1996, LB 900, § 278; Laws 2018, LB377, § 34.  
Operative date January 1, 2019.

**79-526 Class III or IV school district; school board; schools; supervision and control; powers.**

(1) The school board or board of education of a Class III or IV school district has responsibility for the general care and upkeep of the schools, shall provide the necessary supplies and equipment, and, except as otherwise provided, has the power to cause pupils to be taught in such branches and classified in such grades or departments as may seem best adapted to a course of study which the board shall establish with the consent and advice of the State Department of Education. The board shall make provision for pupils that may enter at any time during the school year. The board shall have a record kept of the advancement of all pupils in each branch of study. The board shall make rules and regulations as it deems necessary for the government and health of the pupils and devise any means as may seem best to secure the regular attendance and progress of children at school.

(2) The school board may make expenditures for supplies, equipment, travel, meals, and lodging for school programs and activities, including extracurricular and interscholastic activities, appropriate for the benefit, government, and health of pupils enrolled in the school district.

**Source:** Laws 1881, c. 78, subdivision V, § 3, p. 352; Laws 1883, c. 72, § 10, p. 293; Laws 1901, c. 61, § 1, p. 433; R.S.1913, § 6783; Laws 1919, c. 151, § 1, p. 339; C.S.1922, § 6324; C.S.1929, § 79-503; R.S.1943, § 79-503; Laws 1945, c. 202, § 1, p. 611; Laws 1949, c. 256, § 82, p. 719; R.S.1943, (1994), § 79-443; Laws 1996, LB 900, § 279; Laws 1997, LB 347, § 15; Laws 2014, LB967, § 5; Laws 2018, LB377, § 35.  
Operative date January 1, 2019.

**Cross References**

For powers of health district in counties over 200,000 population, see section 71-1623.

**79-527.01 Repealed. Laws 2017, LB512, § 41.**

**79-528 Reports; filing requirements; contents.**

(1)(a) On or before July 20 in all school districts, the superintendent shall file with the State Department of Education a report showing the number of children from five through eighteen years of age belonging to the school district according to the census taken as provided in sections 79-524 and 79-578.

(b) The board of any district neglecting to take and report the enumeration shall be liable to the school district for all school money which such district may lose by such neglect.

(2) On or before June 30 the superintendent of each school district shall file with the Commissioner of Education a report described as an end-of-the-school-year annual statistical summary showing (a) the number of children attending school during the year under five years of age, (b) the length of time the school has been taught during the year by a qualified teacher, (c) the length of time taught by each substitute teacher, and (d) such other information as the Commissioner of Education directs.

(3) On or before November 1 the superintendent of each school district shall submit to the Commissioner of Education a report described as the annual financial report showing (i) the amount of money received from all sources during the year and the amount of money expended by the school district during the year, (ii) the amount of bonded indebtedness, (iii) such other information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114, and (iv) such other information as the Commissioner of Education directs.

(4)(a) On or before October 15 of each year, the superintendent of each school district shall file with the commissioner the fall school district membership report, which report shall include the number of children from birth through twenty years of age enrolled in the district on October 1 of a given school year. The report shall enumerate (i) students by grade level, (ii) school district levies and total assessed valuation for the current fiscal year, (iii) students enrolled in the district as option students, resident students enrolled in another district as option students, students enrolled in the district as open enrollment students, and resident students enrolled in another district as open enrollment students, and (iv) such other information as the Commissioner of Education directs.

(b) On or before October 15 of each year prior to 2017, each learning community coordinating council shall issue to the department a report which enumerates the learning community levies pursuant to subdivision (2)(b) of section 77-3442 and total assessed valuation for the current fiscal year.

(c) When any school district fails to submit its fall membership report by November 1, the commissioner shall, after notice to the district and an opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money.

**Source:** Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1885, c. 79, § 1, p. 323; Laws 1889, c. 78, § 12, p. 547; R.S.1913, § 6779; C.S.1922, § 6320; C.S.1929, § 79-417; R.S.1943, § 79-419; Laws 1949, c. 256, § 90, p. 723; Laws 1959, c. 391, § 1, p. 1346; Laws 1969, c. 706, § 4, p. 2710; Laws 1977, LB 487, § 1; Laws 1978, LB 874, § 1; Laws 1979, LB 187, § 230; Laws 1985, LB 662, § 32; Referendum 1986, No. 400; Laws 1989, LB 487, § 3; Laws 1990, LB 1090, § 6; Laws 1990, LB 1059, § 36; Laws 1991, LB 511, § 35; Laws 1992, LB 245, § 40; Laws 1992, LB 1001, § 16; Laws 1994, LB 858, § 6; Laws 1994, LB 1310, § 3; R.S.1943, (1994), § 79-451; Laws 1996, LB 900, § 281; Laws 1997, LB 269, § 59; Laws 1997, LB 806, § 27; Laws 1998, Spec. Sess., LB 1, § 13; Laws 1999, LB 272, § 73; Laws 1999, LB 813, § 11; Laws 2001, LB 797, § 13; Laws 2003, LB 67, § 6; Laws 2003, LB 394, § 6; Laws 2006, LB 1024, § 52; Laws 2007, LB641, § 9; Laws 2009, LB549, § 20; Laws 2010, LB1070, § 6; Laws 2016, LB1067, § 28; Laws 2018, LB377, § 36; Laws 2018, LB1081, § 6.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB377, section 36, with LB1081, section 6, to reflect all amendments.

**Note:** Changes made by LB1081 became effective July 19, 2018. Changes made by LB377 became operative January 1, 2019.

## Cross References

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

**79-529 Failure to file annual financial report; use of other reports.**

(1) When the superintendent of a school district fails to file the annual financial report on or before the date required by subsection (3) of section 79-528, the State Department of Education shall use the annual financial report from the immediately preceding fiscal year for purposes of the Tax Equity and Educational Opportunities Support Act.

(2) For purposes of the final calculation of state aid pursuant to section 79-1065, the annual financial report for the most recently available complete data year shall be used.

**Source:** Laws 2013, LB410, § 22; Laws 2018, LB1081, § 7.  
Effective date July 19, 2018.

## Cross References

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

(c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

**79-540 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-541 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-542 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-547 Class III school district; school board; board of education; members; number.**

(1) Except as otherwise provided in section 79-550, the school board or board of education of a Class III school district shall consist of six members.

(2) In addition to the members specified in subsection (1) of this section, such school boards or boards of education may include one or more student members selected pursuant to section 79-559.

**Source:** Laws 1969, c. 257, § 37, p. 951; Laws 1982, LB 440, § 2; R.S.1943, (1994), § 79-516.04; Laws 1996, LB 900, § 300; Laws 2014, LB946, § 40; Laws 2018, LB377, § 37.  
Operative date January 1, 2019.

**79-548 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-550 Class III school district elections; change number of board members; resolution; contents; change manner of election.**

(1) The school board of a Class III school district may, by resolution adopted in an odd-numbered year, provide for a change in the number of members on the school board to a minimum of five members and a maximum of nine members to be effective at the beginning of the term of office for school board members elected at the next statewide general election. The school board shall include in the resolution:

(a) A statement of the change in number of members to be added to or eliminated from the school board;

(b) A statement that the change does not take effect until the beginning of the term of office for school board members elected at the next statewide general election;

(c) If the members are not nominated or elected by district or ward in the school district:

(i) If the change in number adds members to the school board, a statement of the number of members to be elected at the next statewide general election, including the members whose terms are expiring and the additional members, and the number of such members to be elected to four-year terms and the number of such members to be elected to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election. The members receiving the highest number of votes shall be elected to four-year terms, and the members receiving the next highest number of votes shall be elected to two-year terms; and

(ii) If the change in number decreases the number of members on the school board, a statement of the number of members to be elected at the next statewide general election, if any, and at the subsequent statewide general election, if necessary, and the number of such members to be elected at such elections to four-year terms and the number of such members to be elected at such elections to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election. The members receiving the highest number of votes shall be elected to four-year terms, and the members receiving the next highest number of votes shall be elected to two-year terms; and

(d) If the members are nominated or elected by district or ward in the school district:

(i) The changes to the boundaries of districts or wards;

(ii) A statement that the changes to the boundaries are effective for purposes of nominating or electing, as applicable, members to the school board beginning with the next statewide primary and general elections but that the changes in boundaries are not effective for purposes of representation until the beginning of the term of office for school board members elected at the next statewide general election;

(iii) A statement of which districts or wards, as changed, are on the ballot at the next statewide primary or general election, as applicable, and whether the members elected from such districts or wards are being elected for four-year terms or two-year terms;

(iv) A statement specifying the newly established districts which each member will represent for the remainder of his or her term, if necessary;

(v) If the change in number adds members to the school board, a statement of the number of members to be elected at the next statewide general election, including the members whose terms are expiring and the additional members, and the districts or wards of such members to be elected to four-year terms and the districts or wards of such members to be elected to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election; and

(vi) If the change in number decreases the number of members on the school board, a statement of the number of members to be elected at the next statewide general election, if any, and at the subsequent statewide general election, if necessary, and the districts or wards of such members to be elected at such elections to four-year terms and the districts or wards of such members to be elected at such elections to two-year terms so that approximately one-half of the total number of members are elected at each statewide general election.

(2) If the members of the school board of a Class III school district are nominated and elected by district or ward, the board may by resolution provide for the nomination of the members by district or ward and the election of the members at large. If the members are nominated by district or ward and elected at large, the board may by resolution provide for the nomination and election of the members by district or ward.

(3) Any Class III school district which has a nine-member school board on January 1, 2015, may continue to have a nine-member school board without complying with the requirements of this section.

**Source:** Laws 1974, LB 592, § 8; Laws 1981, LB 303, § 4; Laws 1994, LB 76, § 602; R.S.1943, (1994), § 79-803.11; Laws 1996, LB 900, § 303; Laws 1997, LB 595, § 5; Laws 2014, LB946, § 42; Laws 2018, LB377, § 38.

Operative date January 1, 2019.

**79-553 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

(d) SCHOOL BOARD MEETINGS AND PROCEDURES

**79-554 Class III school district; school board; quorum; meetings; open to public.**

In all meetings of a school board of a Class III school district, a majority of the members shall constitute a quorum for the transaction of business. Regular meetings shall be held on or before the third Monday of every month. All meetings of the board shall be subject to the Open Meetings Act. Special meetings may be called by the president or any two members, but all members shall have notice of the time and place of meeting. If a school district is participating in an approved unified system as provided in section 79-4,108, regular meetings of such district's school board shall be held at least twice during the school year.

**Source:** Laws 1881, c. 78, subdivision V, § 1, p. 352; Laws 1885, c. 79, § 1, p. 324; R.S.1913, § 6781; C.S.1922, § 6322; C.S.1929, § 79-501; R.S.1943, § 79-501; Laws 1949, c. 256, § 78, p. 719; Laws 1972, LB 1268, § 1; Laws 1973, LB 429, § 1; Laws 1980, LB 735, § 1; Laws 1988, LB 812, § 2; Laws 1990, LB 1109, § 1; Laws 1991, LB 689, § 1; Laws 1991, LB 836, § 32; R.S.1943, (1994), § 79-439; Laws 1996, LB 900, § 307; Laws 2003, LB 67, § 7; Laws 2004, LB 821, § 25; Laws 2018, LB377, § 39.

Operative date January 1, 2019.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**79-556 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-557 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-558 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-559 Class III or IV school district; school board or board of education; student member; term; qualifications.**

(1) The school board or board of education of any Class III or IV school district may include at least one nonvoting member who is a public high school student from the district. If the board elects to include such a nonvoting student member, the student member shall serve for a term of one year, beginning on September 1, and shall be the student body or student council president, the senior class representative, or a representative elected from and by the entire student body, as designated by the voting members of the board.

(2) Any nonvoting student member of the board has the privilege of attending all open meetings of the board but shall be excluded from executive sessions.

**Source:** Laws 1982, LB 440, § 1; R.S.1943, (1994), § 79-547.02; Laws 1996, LB 900, § 312; Laws 2013, LB125, § 7; Laws 2018, LB377, § 40.

Operative date January 1, 2019.

**79-563 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

(e) SCHOOL BOARD OFFICERS

**79-564 Class III school district; school board; officers; elect.**

At the first meeting of each school board or board of education elected in a Class III school district, and annually thereafter, the board shall elect from among its members a president and vice president. The board shall also elect a secretary who need not be a member of the board. If the secretary is a member of the board, an assistant secretary may be named and his or her duties and compensation set by the board.

**Source:** Laws 1969, c. 257, § 39, p. 953; Laws 1973, LB 557, § 9; R.S.1943, (1994), § 79-516.06; Laws 1996, LB 900, § 317; Laws 2018, LB377, § 41.

Operative date January 1, 2019.

**79-565 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-568 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-569 Class III or IV school district; president; powers and duties.**

The president of the school board of a Class III or IV school district shall: (1) Preside at all meetings of the district; (2) countersign all orders upon the treasury for money to be disbursed by the district and all warrants of the



secretary on the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer; (3) administer the oath to the secretary and treasurer of the district when such an oath is required by law in the transaction of the business of the district; and (4) perform such other duties as may be required by law of the president of the board. He or she is entitled to vote on any issue that may come before any meeting.

**Source:** Laws 1881, c. 78, subdivision IV, § 1, p. 345; Laws 1901, c. 63, § 5, p. 439; Laws 1909, c. 120, § 1, p. 460; R.S.1913, § 6763; C.S.1922, § 6304; C.S.1929, § 79-401; R.S.1943, § 79-401; Laws 1949, c. 256, § 91, p. 723; R.S.1943, (1994), § 79-452; Laws 1996, LB 900, § 322; Laws 1997, LB 345, § 25; Laws 1999, LB 272, § 76; Laws 2009, LB549, § 21; Laws 2018, LB377, § 42. Operative date January 1, 2019.

Cross References

For form of oath, see sections 11-101 and 11-101.01.

**79-570 Class III or IV school district; president; meetings; maintenance of order.**

If at any district meeting of a Class III or IV school district any person conducts himself or herself in a disorderly manner and persists in such conduct after notice by the president or person presiding, the president or person presiding may order such person to withdraw from the meeting and, if the person refuses, may order any person or persons to take such person into custody until the meeting is adjourned.

**Source:** Laws 1881, c. 78, subdivision IV, § 2, p. 345; R.S.1913, § 6764; C.S.1922, § 6305; C.S.1929, § 79-402; R.S.1943, § 79-402; Laws 1949, c. 256, § 92, p. 724; Laws 1988, LB 1030, § 51; R.S.1943, (1994), § 79-453; Laws 1996, LB 900, § 323; Laws 2018, LB377, § 43.

Operative date January 1, 2019.

**79-572 Class III or IV school district; president; actions for or against district; appearance required.**

The president of a Class III or IV school district shall appear for and on behalf of the district in all suits brought by or against the district.

**Source:** Laws 1881, c. 78, subdivision IV, § 7, p. 347; R.S.1913, § 6769; C.S.1922, § 6310; C.S.1929, § 79-407; R.S.1943, § 79-407; Laws 1949, c. 256, § 94, p. 724; R.S.1943, (1994), § 79-455; Laws 1996, LB 900, § 325; Laws 2018, LB377, § 44.

Operative date January 1, 2019.

**79-576 Class III or IV school district; secretary; duty as clerk of board.**

The secretary of a Class III or IV school district shall be clerk of the school board and of all meetings when present, but if he or she is not present, the school board may appoint a clerk for the time being, who shall certify the proceedings to the secretary to be recorded by him or her.

**Source:** Laws 1881, c. 78, subdivision IV, § 9, p. 348; R.S.1913, § 6771; C.S.1922, § 6312; C.S.1929, § 79-409; R.S.1943, § 79-409; Laws 1949, c. 256, § 95, p. 724; Laws 1996, LB 604, § 6; R.S.1943,

(1994), § 79-456; Laws 1996, LB 900, § 329; Laws 1997, LB 345, § 27; Laws 2016, LB1066, § 5; Laws 2018, LB377, § 45.  
Operative date January 1, 2019.

**79-577 Class III or IV school district; secretary; books, records, and reports; duty to preserve.**

The secretary of a Class III or IV school district shall (1) record all proceedings of the district in a book furnished by the district to be kept for that purpose, (2) preserve copies of all reports, and (3) safely preserve and keep all books and papers belonging to the office.

**Source:** Laws 1881, c. 78, subdivision IV, § 10, p. 348; R.S.1913, § 6772; C.S.1922, § 6313; C.S.1929, § 79-410; R.S.1943, § 79-410; Laws 1949, c. 256, § 96, p. 724; R.S.1943, (1994), § 79-457; Laws 1996, LB 900, § 330; Laws 1999, LB 272, § 78; Laws 2018, LB377, § 46.

Operative date January 1, 2019.

**79-578 Class III or IV school district; secretary; school census; duty to take; time allowed.**

The secretary of a Class III or IV school district shall take, or cause to be taken by some person appointed for the purpose by a majority vote of the school board, the census of the school district and then make or cause to be made a list in writing of the names of all the children belonging to such district, from birth through twenty years of age, together with the names of all the taxpayers in the district. A copy of the list, verified by oath of the person taking such census or by affidavit appended to or endorsed on the list, setting forth that it is a correct list of the names of all children belonging in the district from birth through twenty years of age and that it reflects such information as of June 30, shall be maintained as provided in section 79-524.

**Source:** Laws 1881, c. 78, subdivision IV, § 12, p. 349; Laws 1889, c. 78, § 10, p. 546; R.S.1913, § 6774; C.S.1922, § 6315; C.S.1929, § 79-412; Laws 1931, c. 139, § 1, p. 385; C.S.Supp.,1941, § 79-412; R.S.1943, § 79-412; Laws 1949, c. 256, § 97, p. 724; Laws 1955, c. 315, § 7, p. 977; Laws 1957, c. 346, § 1, p. 1189; Laws 1967, c. 534, § 1, p. 1769; Laws 1976, LB 587, § 1; Laws 1978, LB 874, § 2; Laws 1990, LB 1090, § 7; Laws 1991, LB 511, § 36; Laws 1992, LB 245, § 41; R.S.1943, (1994), § 79-458; Laws 1996, LB 900, § 331; Laws 1999, LB 272, § 79; Laws 2018, LB377, § 47.

Operative date January 1, 2019.

**79-579 Class III or IV school district; district officers; disputes over orders; county attorney; duty to investigate; mandamus.**

Whenever a secretary or president of the school board of a Class III or IV school district refuses to sign orders on the treasurer or the treasurer thinks best to refuse the payment of orders drawn upon him or her, the difficulty shall be referred for adjudication to the county attorney, who shall proceed at once to investigate the matter. If the county attorney finds that the officer complained of refuses through contumacy or for insufficient reasons, the county

attorney, on behalf of the district, shall apply to the proper court for a writ of mandamus to compel the officer to perform his or her duty.

**Source:** Laws 1881, c. 78, subdivision III, § 11, p. 345; R.S.1913, § 6762; C.S.1922, § 6303; C.S.1929, § 79-311; R.S.1943, § 79-311; Laws 1949, c. 256, § 106, p. 727; R.S.1943, (1994), § 79-467; Laws 1996, LB 900, § 332; Laws 1999, LB 272, § 80; Laws 2018, LB377, § 48.

Operative date January 1, 2019.

**79-580 Class III school district; board of education; claims against; record of proceedings; secretary; duty to publish.**

The secretary of the school board or board of education of each Class III school district shall, within ten days after any regular or special meeting of the board, publish one time in a legal newspaper published in or of general circulation in such district a list of the claims, arising on contract or tort, allowed at the meeting. The list shall set forth the name of the claimant and the amount and nature of the claim allowed, to consist of not more than ten words in stating the nature of each such claim. The secretary shall likewise cause to be published a concise summary of all other proceedings of such meetings. Publication of such claims or proceedings in a legal newspaper shall not be required unless the publication can be done at an expense not exceeding the rates provided by law for the publication of proceedings of county boards.

**Source:** Laws 1972, LB 1255, § 1; R.S.1943, (1994), § 79-552; Laws 1996, LB 900, § 333; Laws 2018, LB377, § 49.

Operative date January 1, 2019.

**79-581 Class III school district; publication of claims and summary of proceedings; noncompliance by secretary; penalty.**

The secretary of any school board or board of education of a Class III school district failing or neglecting to comply with the provisions of section 79-580 shall be guilty of a Class V misdemeanor. In the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect.

**Source:** Laws 1947, c. 274, § 2, p. 879; R.S.Supp.,1947, § 79-604.02; Laws 1949, c. 256, § 198, p. 755; Laws 1977, LB 39, § 254; R.S.Supp.,1980, § 79-514; R.S.1943, (1994), § 79-703.01; Laws 1996, LB 900, § 334; Laws 1997, LB 347, § 17; Laws 2018, LB377, § 50.

Operative date January 1, 2019.

**79-585 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-586 Class III or IV school district; treasurer; bond or insurance; filing; failure to give; effect.**

The treasurer of each Class III or IV school district shall, within ten days after his or her election, execute to the county and file with the secretary a bond or evidence of equivalent insurance coverage of not less than five hundred dollars in any instance and not more than double the amount of money, as nearly as can be ascertained, to come into his or her hands as treasurer at any

one time, which bond shall be signed by either a personal surety or a surety company or companies of recognized responsibility as surety or sureties, to be approved by the president and secretary, conditioned for the faithful discharge of the duties of the office. The bond when approved or evidence of equivalent insurance coverage shall be filed by the secretary in the office of the county treasurer of the county in which the school district is situated. If the treasurer fails to execute such bond or provide evidence of such insurance coverage, the office shall be declared vacant by the school board or board of education and the board shall immediately appoint a treasurer who shall be subject to the same conditions and possess the same powers as if elected to that office. The treasurer shall have no power or authority to withdraw or disburse the money of the district prior to filing the bond or evidence of equivalent insurance coverage provided for in this section.

**Source:** Laws 1881, c. 78, subdivision IV, § 4, p. 346; Laws 1883, c. 72, § 6, p. 291; R.S.1913, § 6766; C.S.1922, § 6307; C.S.1929, § 79-404; R.S.1943, § 79-404; Laws 1949, c. 256, § 98, p. 725; Laws 1959, c. 392, § 1, p. 1348; Laws 1975, LB 103, § 2; R.S.1943, (1994), § 79-459; Laws 1996, LB 900, § 339; Laws 2005, LB 380, § 1; Laws 2018, LB377, § 51.  
Operative date January 1, 2019.

**79-587 Class III or IV school district; treasurer; district funds; receipt and disbursement.**

The treasurer of each Class III or IV school district shall apply for and receive from the county treasurer all school money apportioned to or collected for the district by the county treasurer, upon order of the secretary countersigned by the president. The treasurer shall pay out all money received by him or her, on the order of the secretary countersigned by the president of such district.

**Source:** Laws 1881, c. 78, subdivision IV, § 5, p. 346; R.S.1913, § 6767; C.S.1922, § 6308; C.S.1929, § 79-405; R.S.1943, § 79-405; Laws 1949, c. 256, § 99, p. 725; R.S.1943, (1994), § 79-460; Laws 1996, LB 900, § 340; Laws 2018, LB377, § 52.  
Operative date January 1, 2019.

**79-588 Class III or IV school district; treasurer; records and reports required; delivery upon expiration of office.**

The treasurer of a Class III or IV school district shall keep a record in which the treasurer shall enter all the money received and disbursed by him or her, specifying particularly (1) the source from which money has been received, (2) to what fund it belongs, and (3) the person or persons to whom and the object for which the same has been paid out. The treasurer shall present to the district, at each annual meeting, a report in writing containing a statement of all money received during the preceding year and of the disbursement made with the items of such disbursements and exhibit the vouchers therefor. At the close of the treasurer's term of office, he or she shall settle with the school board and shall hand over to his or her successor the records and all receipts, vouchers, orders, and papers coming into his or her hands as treasurer of the

district, together with all money remaining in his or her hands as such treasurer.

**Source:** Laws 1881, c. 78, subdivision IV, § 6, p. 347; R.S.1913, § 6768; C.S.1922, § 6309; C.S.1929, § 79-406; R.S.1943, § 79-406; Laws 1949, c. 256, § 100, p. 726; R.S.1943, (1994), § 79-461; Laws 1996, LB 900, § 341; Laws 1999, LB 272, § 81; Laws 2018, LB377, § 53.

Operative date January 1, 2019.

**79-594 Class III or IV school district; superintendent; appointment; salary; term.**

The school board in a Class III or IV school district may also elect at any regular meeting one superintendent of public instruction with such salary as the board deems best and may enter into contract with him or her at its discretion, for a term not to exceed three years.

**Source:** Laws 1881, c. 78, § 8, p. 379; Laws 1883, c. 72, § 20, p. 298; Laws 1899, c. 66, § 1, p. 295; Laws 1903, c. 93, § 1, p. 546; R.S.1913, § 6955; C.S.1922, § 6589; Laws 1929, c. 94, § 3, p. 353; C.S.1929, § 79-2508; Laws 1937, c. 182, § 4, p. 716; C.S.Supp.,1941, § 79-2508; R.S.1943, § 79-2519; Laws 1949, c. 256, § 206, p. 758; R.S.1943, (1994), § 79-519; Laws 1996, LB 900, § 347; Laws 1997, LB 345, § 28; Laws 2018, LB377, § 54. Operative date January 1, 2019.

**Cross References**

**Class V school district**, appointment of superintendent, see section 79-567.

**(f) PROVIDING EDUCATION OUTSIDE THE DISTRICT**

**79-598 Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.**

(1) The school board of any public school district in this state, when authorized by a majority of the votes cast at any annual or special meeting, shall (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(2) The school board of any public school district may also, when petitioned to do so by at least two-thirds of the parents residing in the district having children of school age who will attend school under the contract plan, (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(3) The contract price for instruction referred to in subsections (1) and (2) of this section shall be the cost per pupil for the immediately preceding school

year or the current year, whichever appears more practical as determined by the board of the district which accepts the pupils for instruction. The cost per pupil shall be determined by dividing the sum of the operational cost and debt service expense of the accepting district, except retirement of debt principal, plus three percent of the insurable or present value of the school plant and equipment of the accepting district, by the average daily membership of pupils in the accepting district. Payment of the contract price shall be made in equal installments at the beginning of the first and second semesters.

(4) All the contracts referred to in subsections (1) and (2) of this section shall be in writing, and copies of all such contracts shall be filed in the office of the superintendent of the school district on or before August 15 of each year. School districts thus providing instruction for their children in neighboring districts shall be considered as maintaining a school as required by law. The teacher of the school providing the instruction shall keep a separate record of the attendance of all pupils from the first named district and make a separate report to the secretary of that district. The board of every sending district contracting under this section shall enter into contracts with school districts of the choice of the parents of the children to be educated under the contract plan. Any school district failing to comply with this section shall not be paid any funds from the state apportionment of school funds while such violation continues.

(5) The State Committee for the Reorganization of School Districts may dissolve any district (a) failing to comply with this section, (b) in which the votes cast at an annual or special election on the question of contracting with a neighboring district are evenly divided, or (c) in which the governing body of the district is evenly divided in its vote on the question of contracting pursuant to subsection (2) of this section. The state committee shall dissolve and attach to a neighboring district or districts any school district which, for two consecutive years, contracts for the instruction of its pupils, except that when such dissolution will create extreme hardships on the pupils or the district affected, the State Board of Education may, on application by the school board of the district, waive the requirements of this subsection. The dissolution of any school district pursuant to this section shall be effected in the manner prescribed in section 79-498.

**Source:** Laws 1897, c. 64, § 1, p. 311; R.S.1913, § 6944; C.S.1922, § 6526; C.S.1929, § 79-2103; R.S.1943, § 79-2112; Laws 1945, c. 212, § 1, p. 625; Laws 1947, c. 287, § 1, p. 896; Laws 1949, c. 256, § 124, p. 733; Laws 1951, c. 280, § 1, p. 944; Laws 1953, c. 291, § 5, p. 990; Laws 1953, c. 298, § 2, p. 1006; Laws 1955, c. 313, § 1, p. 966; Laws 1955, c. 314, § 1, p. 968; Laws 1955, c. 315, § 8, p. 977; Laws 1959, c. 393, § 1, p. 1349; Laws 1959, c. 386, § 2, p. 1337; Laws 1961, c. 401, § 1, p. 1215; Laws 1965, c. 521, § 1, p. 1647; Laws 1967, c. 535, § 1, p. 1770; Laws 1967, c. 536, § 1, p. 1773; Laws 1969, c. 709, § 3, p. 2724; Laws 1971, LB 292, § 10; Laws 1989, LB 30, § 4; Laws 1989, LB 487, § 4; R.S.1943, (1994), § 79-486; Laws 1996, LB 900, § 351; Laws 1999, LB 272, § 82; Laws 2003, LB 67, § 9; Laws 2009, LB549, § 22; Laws 2018, LB377, § 55.  
Operative date January 1, 2019.

## Cross References

Contract for instruction relative to certain mergers and dissolutions, see section 79-470.  
 Depopulated districts, provisions for contracting, see section 79-499.  
 Expense of opposing dissolution order under this section, see section 79-471.

**79-5,104 Class III school district; tuition of pupil attending school outside of district; payment, when.**

The school board or board of education of any Class III school district may, in its discretion, pay the regular school tuition for any pupil residing in such school district and attending a school outside such school district when, in the opinion of the board, the best interests of the pupil or the school district may so require.

**Source:** Laws 1955, c. 317, § 1, p. 982; R.S.1943, (1994), § 79-516.01; Laws 1996, LB 900, § 357; Laws 2018, LB377, § 56.  
 Operative date January 1, 2019.

**79-5,107 Repealed. Laws 2018, LB377, § 87.**  
 Operative date January 1, 2019.

**79-5,108 Repealed. Laws 2018, LB377, § 87.**  
 Operative date January 1, 2019.

## ARTICLE 6

## SCHOOL TRANSPORTATION

## Section

- 79-604. Pupils; transportation; buses; routes, posting with signs.
- 79-605. Nonresident pupils; transportation; schedule of fees; applicability of section.
- 79-607. Pupil transportation vehicles; State Board of Education; rules and regulations; violations; penalty.
- 79-608. Students; transportation; buses; operator; requirements; violation; penalty.
- 79-611. Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.

**79-604 Pupils; transportation; buses; routes, posting with signs.**

The Department of Transportation shall post on state highways signs reading: Unlawful to pass school buses stopped to load or unload children. These signs shall be adequate in size and number to properly inform the public. School districts may obtain and post such signs on other bus route roads upon the approval of appropriate county officials. The Department of Transportation may furnish such signs at cost to school districts.

**Source:** Laws 1959, c. 396, § 2, p. 1355; R.S.1943, (1994), § 79-488.03; Laws 1996, LB 900, § 365; Laws 2017, LB339, § 271.

**79-605 Nonresident pupils; transportation; schedule of fees; applicability of section.**

Except as otherwise provided in this section, any school board may authorize the use of buses belonging to the school district for the transportation of school children residing outside such district. A fee sufficient to pay the additional costs of such transportation shall be charged each person so transported. The board shall prepare a schedule of all such fees charged, and a copy of such schedule shall be filed in the office of the superintendent of the school district.

This section shall not apply to an agreement for transportation entered into pursuant to section 79-241.

**Source:** Laws 1959, c. 394, § 2, p. 1352; Laws 1991, LB 207, § 1; Laws 1993, LB 348, § 20; R.S.1943, (1994), § 79-488.04; Laws 1996, LB 900, § 366; Laws 1999, LB 272, § 83; Laws 2018, LB377, § 57.

Operative date January 1, 2019.

**Cross References**

**Public Elementary and Secondary Student Fee Authorization Act**, see section 79-2,125.

**79-607 Pupil transportation vehicles; State Board of Education; rules and regulations; violations; penalty.**

The State Board of Education shall adopt and promulgate rules and regulations for operators of pupil transportation vehicles as to physical and mental qualities, driving skills and practices, and knowledge of traffic laws, rules, and regulations which relate to school bus transportation. Such traffic rules and regulations shall by reference be made a part of any such contract with a school district. Any officer or employee of any school district who violates any of the traffic rules or regulations or fails to include obligations to comply with the traffic rules and regulations in any contract executed by him or her on behalf of a school district may be guilty of a Class V misdemeanor and may, upon conviction thereof, be subject to removal from office or employment. Any person operating a school bus under contract with a school district who fails to comply with any of such traffic rules and regulations may be guilty of breach of contract, and such person may be dismissed or such contract may be canceled after notice and hearing by such school district.

**Source:** Laws 1996, LB 900, § 368; Laws 2016, LB1066, § 6.

**79-608 Students; transportation; buses; operator; requirements; violation; penalty.**

(1) Any person, before operating a school bus, including any school bus which transports students by direct contract with the students or their parents and not owned by or under contract with the school district or nonpublic school, shall submit himself or herself to an examination by a licensed physician to determine whether or not he or she meets the physical and mental standards established pursuant to section 79-607 and shall furnish to the school board or board of education or the governing authority of a nonpublic school a written report of each such examination on standard forms prescribed by the State Department of Education, signed by the person conducting the same, showing that he or she is qualified to operate a school bus and that he or she meets the physical and mental standards.

(2) It shall be unlawful for any person operating a school bus to be or remain on duty for a longer period than sixteen consecutive hours. When any person operating a bus has been continuously on duty for sixteen hours, he or she shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such operator, who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.



(3) Any person violating this section shall be guilty of a Class V misdemeanor. His or her contract with the school district shall be canceled as provided in section 79-607.

**Source:** Laws 1963, c. 460, § 1, p. 1488; Laws 1965, c. 523, § 3, p. 1653; Laws 1971, LB 292, § 13; Laws 1973, LB 358, § 2; Laws 1977, LB 39, § 251; Laws 1989, LB 285, § 142; Laws 1990, LB 980, § 35; R.S.1943, (1994), § 79-488.06; Laws 1996, LB 900, § 369; Laws 2009, LB549, § 24; Laws 2018, LB347, § 2.  
Operative date January 1, 2019.

**79-611 Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.**

(1) The school board of any school district shall provide free transportation, partially provide free transportation, or pay an allowance for transportation in lieu of free transportation as follows:

(a) When a student attends an elementary school in his or her own district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(b) When a student is required to attend an elementary school outside of his or her own district and lives more than four miles from such elementary school as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(c) When a student attends a secondary school in his or her own Class III school district and lives more than four miles from the public schoolhouse as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence. This subdivision does not apply to any elementary-only school district that merged with a high-school-only school district to form a new Class III school district on or after January 1, 1997, and before June 16, 2006; and

(d) When a student, other than a student in grades ten through twelve in a Class V district, attends an elementary or junior high school in his or her own Class V district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence.

(2)(a) For school years prior to school year 2017-18 and as required pursuant to subsection (3) of section 79-241, the school board of any school district that is a member of a learning community shall provide free transportation for a student who resides in such learning community and attends school in such school district if (i) the student is transferring pursuant to the open enrollment provisions of section 79-2110, qualifies for free or reduced-price lunches, lives more than one mile from the school to which he or she transfers, and is not otherwise disqualified under subdivision (2)(c) of this section, (ii) the student is transferring pursuant to the open enrollment provisions of section 79-2110, is a student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends, lives more than one mile from the school to which he or she transfers, and is not otherwise disqualified under subdivision (2)(c) of this section, (iii) the student is attending a focus school or program and lives more than one mile from the school building housing the focus school or program, or (iv) the student is attending a magnet school or program and lives

more than one mile from the magnet school or the school housing the magnet program.

(b) For purposes of this subsection, student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends has the definition found in section 79-2110. This subsection does not prohibit a school district that is a member of a learning community from providing transportation to any intradistrict student.

(c) For any student who resides within a learning community and transfers to another school building pursuant to the open enrollment provisions of section 79-2110 and who had not been accepted for open enrollment into any school building within such district prior to September 6, 2013, the school board is exempt from the requirement of subdivision (2)(a) of this section if (i) the student is transferring to another school building within his or her home school district or (ii) the student is transferring to a school building in a school district that does not share a common border with his or her home school district.

(3) The transportation allowance which may be paid to the parent, custodial parent, or guardian of students qualifying for free transportation pursuant to subsection (1) or (2) of this section shall equal two hundred eighty-five percent of the mileage rate provided in section 81-1176, multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the schoolhouse exceeds three miles. Such transportation allowance does not apply to students residing in a learning community who qualify for free or reduced-price lunches.

(4) Whenever students from more than one family travel to school in the same vehicle, the transportation allowance prescribed in subsection (3) of this section shall be payable as follows:

(a) To the parent, custodial parent, or guardian providing transportation for students from other families, one hundred percent of the amount prescribed in subsection (3) of this section for the transportation of students of such parent's, custodial parent's, or guardian's own family and an additional five percent for students of each other family not to exceed a maximum of one hundred twenty-five percent of the amount determined pursuant to subsection (3) of this section; and

(b) To the parent, custodial parent, or guardian not providing transportation for students of other families, two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, from the residence of the student to the pick-up point at which students transfer to the vehicle of a parent, custodial parent, or guardian described in subdivision (a) of this subsection.

(5) When a student who qualifies under the mileage requirements of subsection (1) of this section lives more than three miles from the location where the student must be picked up and dropped off in order to access school-provided free transportation, as measured by the shortest route that must actually and necessarily be traveled by motor vehicle between his or her residence and such location, such school-provided transportation shall be deemed partially provided free transportation. School districts partially providing free transportation shall pay an allowance to the student's parent or guardian equal to two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the

student to the location where the student must be picked up and dropped off exceeds three miles.

(6) The board may authorize school-provided transportation to any student who does not qualify under the mileage requirements of subsection (1) of this section and may charge a fee to the parent or guardian of the student for such service. No transportation payments shall be made to a family for mileage not actually traveled by such family. The number of days the student has attended school shall be reported monthly by the teacher to the board of such public school district.

(7) No more than one allowance shall be made to a family irrespective of the number of students in a family being transported to school.

(8) No student shall be exempt from school attendance on account of distance from the public schoolhouse.

**Source:** Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1907; Laws 1949, c. 256, § 128, p. 735; Laws 1951, c. 276, § 6, p. 930; Laws 1955, c. 315, § 9, p. 979; Laws 1963, c. 483, § 1, p. 1553; Laws 1969, c. 717, § 1, p. 2743; Laws 1969, c. 718, § 1, p. 2744; Laws 1969, c. 719, § 1, p. 2746; Laws 1976, LB 852, § 1; Laws 1977, LB 117, § 1; Laws 1977, LB 33, § 10; Laws 1979, LB 425, § 1; Laws 1980, LB 867, § 2; Laws 1981, LB 204, § 156; Laws 1981, LB 316, § 3; Laws 1986, LB 419, § 1; Laws 1987, LB 200, § 1; Laws 1990, LB 259, § 22; Laws 1990, LB 1059, § 38; Laws 1993, LB 348, § 21; Laws 1994, LB 1311, § 1; R.S.1943, (1994), § 79-490; Laws 1996, LB 900, § 372; Laws 1997, LB 710, § 4; Laws 1997, LB 806, § 28; Laws 1999, LB 272, § 84; Laws 2003, LB 394, § 7; Laws 2005, LB 126, § 42; Laws 2006, LB 1024, § 56; Referendum 2006, No. 422; Laws 2007, LB641, § 10; Laws 2008, LB1154, § 8; Laws 2009, LB549, § 25; Laws 2013, LB410, § 8; Laws 2013, LB585, § 2; Laws 2016, LB1067, § 29; Laws 2018, LB377, § 58.  
Operative date January 1, 2019.

#### Cross References

For definitions relating to affiliation of school districts, see section 79-4,101.

## ARTICLE 7

### ACCREDITATION, CURRICULUM, AND INSTRUCTION

#### (b) ACCREDITATION

Section  
79-703. Public schools; approval and accreditation standards; accreditation committee; duties; legislative intent.

#### (c) CURRICULUM AND INSTRUCTION REQUIREMENTS

79-716. Repealed. Laws 2018, LB377, § 87.  
79-717. Repealed. Laws 2018, LB377, § 87.  
79-728. Kindergarten programs; required.

#### (e) BOOKS, EQUIPMENT, AND SUPPLIES

79-734. School textbooks, equipment, and supplies; purchase and loan; rules and regulations; department; duty.

## Section

## (f) VOCATIONAL EDUCATION

- 79-738. Repealed. Laws 2017, LB512, § 41.
- 79-739. Repealed. Laws 2017, LB512, § 41.
- 79-740. Repealed. Laws 2017, LB512, § 41.
- 79-741. Repealed. Laws 2017, LB512, § 41.
- 79-742. Repealed. Laws 2017, LB512, § 41.
- 79-743. Repealed. Laws 2017, LB512, § 41.
- 79-744. Repealed. Laws 2017, LB512, § 41.
- 79-746. Interdistrict school agreements; authorized.

## (i) QUALITY EDUCATION ACCOUNTABILITY ACT

- 79-759. Standard college admission test; administered; expense.
- 79-760.01. Academic content standards; State Board of Education; duties.
- 79-760.02. Academic content standards; school districts; duties.
- 79-760.03. Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties; technical advisory committee; terms; expenses.
- 79-760.06. Accountability system; combine multiple indicators; State Department of Education; powers; duties; designation of priority schools.
- 79-760.07. Priority school; intervention team; members; duties; expenses; develop progress plan; contents; compliance required; review; school board; duties; Commissioner of Education; report; contents.
- 79-761. Mentor teacher programs; State Board of Education; duties.

## (n) CENTER FOR STUDENT LEADERSHIP AND EXPANDED LEARNING ACT

- 79-772. Act, how cited.
- 79-773. Legislative findings.
- 79-774. Terms, defined.
- 79-775. Purpose of act; Center for Student Leadership and Expanded Learning; duties.

## (b) ACCREDITATION

**79-703 Public schools; approval and accreditation standards; accreditation committee; duties; legislative intent.**

(1) To ensure both equality of opportunity and quality of programs offered, all public schools in the state shall be required to meet quality and performance-based approval or accreditation standards as prescribed by the State Board of Education. The board shall establish a core curriculum standard, which shall include multicultural education and vocational education courses, for all public schools in the state. Accreditation and approval standards shall be designed to assure effective schooling and quality of instructional programs regardless of school size, wealth, or geographic location. Accreditation standards for school districts that are members of a learning community shall include participation in the community achievement plan for the learning community as approved by the board. The board shall recognize and encourage the maximum use of cooperative programs and may provide for approval or accreditation of programs on a cooperative basis, including the sharing of administrative and instructional staff, between school districts for the purpose of meeting the approval and accreditation requirements established pursuant to this section and section 79-318.

(2) The Commissioner of Education shall appoint an accreditation committee which shall be representative of the educational institutions and agencies of the state and shall include as a member the director of admissions of the University of Nebraska.

(3) The accreditation committee shall be responsible for: (a) Recommending appropriate standards and policies with respect to the accreditation and classification of schools; and (b) making recommendations annually to the commissioner relative to the accreditation and classification of individual schools. No school shall be considered for accreditation status which has not first fulfilled all requirements for an approved school.

(4) By school year 1993-94 all public schools in the state shall be accredited.

(5) It is the intent of the Legislature that all public school students shall have access to all educational services required of accredited schools. Such services may be provided through cooperative programs or alternative methods of delivery.

**Source:** Laws 1949, c. 248, § 1, p. 672; Laws 1953, c. 311, § 3, p. 1035; Laws 1984, LB 994, § 7; Laws 1985, LB 633, § 5; Laws 1988, LB 940, § 10; R.S.Supp., 1988, § 79-1247.02; Laws 1989, LB 15, § 3; Laws 1990, LB 259, § 30; Laws 1992, LB 922, § 6; R.S.1943, (1994), § 79-4,140.16; Laws 1996, LB 900, § 377; Laws 2016, LB1067, § 30.

#### Cross References

**Multicultural education program**, see section 79-719 et seq.

**Private, denominational, or parochial schools**, election not to meet approval or accreditation requirements, see section 79-1601.

**Vocational education**, interdistrict agreements, see section 79-745 et seq.

### (c) CURRICULUM AND INSTRUCTION REQUIREMENTS

**79-716 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-717 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-728 Kindergarten programs; required.**

All school districts shall offer a kindergarten program.

**Source:** Laws 1988, LB 1197, § 2; R.S.1943, (1994), § 79-201.11; Laws 1996, LB 900, § 402; Laws 2018, LB377, § 59.

Operative date January 1, 2019.

#### Cross References

**Kindergarten**, entrance requirements, see section 79-214.

### (e) BOOKS, EQUIPMENT, AND SUPPLIES

**79-734 School textbooks, equipment, and supplies; purchase and loan; rules and regulations; department; duty.**

(1) School boards and boards of education of all classes of school districts shall purchase all textbooks, equipment, and supplies necessary for the schools of such district. The duty to make such purchases may be delegated to employees of the school district.

(2) School boards and boards of education shall purchase and loan textbooks to all children who are enrolled in kindergarten to grade twelve of a public school and, upon individual request, to children who are enrolled in kindergarten to grade twelve of a private school which is approved for continued legal

operation under rules and regulations established by the State Board of Education pursuant to subdivision (5)(c) of section 79-318. The Legislature may appropriate funds to carry out the provisions of this subsection. A school district is not obligated to spend any money for the purchase and loan of textbooks to children enrolled in private schools other than funds specifically appropriated by the Legislature to be distributed by the State Department of Education for the purpose of purchasing and loaning textbooks as provided in this subsection. Textbooks loaned to children enrolled in kindergarten to grade twelve of such private schools shall be textbooks which are designated for use in the public schools of the school district in which the child resides or the school district in which the private school the child attends is located. Such textbooks shall be loaned free to such children subject to such rules and regulations as are or may be prescribed by such school boards or boards of education. The State Department of Education shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include provisions for the distribution of funds appropriated for textbooks. The rules and regulations shall include a deadline for applications from school districts for distribution of funds. If funds are not appropriated to cover the entire cost of applications, a pro rata reduction shall be made. It is the intent of the Legislature that on or before October 1, 2016, the department provide to the Education Committee of the Legislature recommended changes to this subsection that reflect advances in technology and educational content for students.

**Source:** Laws 1891, c. 46, § 1, p. 334; Laws 1903, c. 99, § 1, p. 570; R.S.1913, § 6914; C.S.1922, § 6498; C.S.1929, § 79-1801; R.S. 1943, § 79-1801; Laws 1947, c. 283, § 1, p. 891; Laws 1949, c. 256, § 156, p. 745; Laws 1971, LB 659, § 2; Laws 1973, LB 358, § 3; Laws 1983, LB 203, § 1; Laws 1986, LB 757, § 1; Laws 1995, LB 159, § 1; R.S.Supp.,1995, § 79-4,118; Laws 1996, LB 900, § 408; Laws 2016, LB1066, § 7.

#### (f) VOCATIONAL EDUCATION

**79-738 Repealed. Laws 2017, LB512, § 41.**

**79-739 Repealed. Laws 2017, LB512, § 41.**

**79-740 Repealed. Laws 2017, LB512, § 41.**

**79-741 Repealed. Laws 2017, LB512, § 41.**

**79-742 Repealed. Laws 2017, LB512, § 41.**

**79-743 Repealed. Laws 2017, LB512, § 41.**

**79-744 Repealed. Laws 2017, LB512, § 41.**

**79-746 Interdistrict school agreements; authorized.**

Any public school district in this state may enter into an agreement with any other public school district in this state to provide and share vocational educational programs, particularly programs involving recent technological developments such as electronics, computer science, and communications. The agreement's terms shall be approved by the school board or board of education

of each school district participating in the agreement. The terms of the agreement shall include, but not be limited to, the method of sharing or hiring personnel, purchasing equipment and materials, and course curriculum.

The State Board of Education shall be apprised of all interdistrict school agreements at the time such agreements are executed.

**Source:** Laws 1983, LB 207, § 2; R.S.1943, (1994), § 79-1435.02; Laws 1996, LB 900, § 420; Laws 2017, LB512, § 10.

#### (i) QUALITY EDUCATION ACCOUNTABILITY ACT

##### **79-759 Standard college admission test; administered; expense.**

No later than the 2017-18 school year, the State Department of Education shall administer a standard college admission test, selected by the State Board of Education, to students in the eleventh grade attending a public school in the state in lieu of the assessment for the one grade in high school as required under section 79-760.03. The department shall pay the expenses of administering such college admission test and may use funds from the Nebraska Education Improvement Fund as provided in section 9-812.

**Source:** Laws 2011, LB637, § 26; Laws 2012, LB782, § 151; Laws 2014, LB967, § 7; Laws 2016, LB930, § 2.

##### **79-760.01 Academic content standards; State Board of Education; duties.**

The State Board of Education shall adopt measurable academic content standards for at least the grade levels required for statewide assessment pursuant to section 79-760.03. The standards shall cover the subject areas of reading, writing, mathematics, science, and social studies. The standards adopted shall be sufficiently clear and measurable to be used for testing student performance with respect to mastery of the content described in the state standards. The State Board of Education shall develop a plan to review and update standards for each subject area every seven years. The state board plan shall include a review of commonly accepted standards adopted by school districts.

**Source:** Laws 2000, LB 812, § 2; Laws 2007, LB653, § 5; Laws 2008, LB1157, § 2; Laws 2015, LB525, § 11.

##### **79-760.02 Academic content standards; school districts; duties.**

In accordance with timelines that are adopted by the State Board of Education, but in no event later than one year following the adoption or modification of state standards, each school district shall adopt measurable quality academic content standards in the subject areas of reading, writing, mathematics, science, and social studies. The standards may be the same as, or may be equal to or exceed in rigor, the measurable academic content standards adopted by the state board and shall cover at least the same grade levels. School districts may work collaboratively with educational service units, with learning communities, or through interlocal agreements to develop such standards.

**Source:** Laws 2000, LB 812, § 3; Laws 2007, LB653, § 6; Laws 2008, LB1157, § 3; Laws 2015, LB525, § 12.

**79-760.03 Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties; technical advisory committee; terms; expenses.**

(1) For school year 2009-10 and each school year thereafter, the State Board of Education shall implement a statewide system for the assessment of student learning and for reporting the performance of school districts and learning communities pursuant to this section. The assessment and reporting system shall measure student knowledge of subject matter materials covered by measurable academic content standards selected by the state board.

(2) The state board shall adopt a plan for an assessment and reporting system and implement and maintain the assessment and reporting system according to such plan. The plan shall be submitted annually to the State Department of Education, the Governor, the chairperson of the Education Committee of the Legislature, and the Clerk of the Legislature. The plan submitted to the committee and the Clerk of the Legislature shall be submitted electronically. The state board shall select grade levels for assessment and reporting required pursuant to subsections (4) through (7) of this section. The purposes of the system are to:

(a) Determine how well public schools are performing in terms of achievement of public school students related to the state academic content standards;

(b) Report the performance of public schools based upon the results of state assessment instruments and national assessment instruments;

(c) Provide information for the public and policymakers on the performance of public schools; and

(d) Provide for the comparison among Nebraska public schools and the comparison of Nebraska public schools to public schools elsewhere.

(3) The Governor shall appoint a technical advisory committee to review (a) the statewide assessment plan, (b) state assessment instruments, and (c) the accountability system developed under the Quality Education Accountability Act. The technical advisory committee shall consist of three nationally recognized experts in educational assessment and measurement, one administrator from a school in Nebraska, and one teacher from a school in Nebraska. The members shall serve terms of three years, except that two of the members shall be appointed for initial terms of two years. Any vacancy shall be filled by the Governor for the remainder of the term. One of the members shall be designated as chairperson by the Governor. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The committee shall advise the Governor, the state board, and the State Department of Education on the development of statewide assessment instruments and the statewide assessment plan. The appointments to the committee shall be confirmed by the Legislature.

(4) Through school year 2016-17, the state board shall prescribe a statewide assessment of writing that relies on writing samples in each of three grades selected by the state board. Each year at least one of the three selected grades shall participate in the statewide writing assessment with each selected grade level participating at least once every three years.

(5) For school year 2009-10 and for each school year thereafter, the state board shall prescribe a statewide assessment of reading. The statewide assessment of reading shall include assessment instruments for each of the grade



levels three through eight and for one grade in high school and standards adopted by the state board pursuant to section 79-760.01. For school year 2017-18 and each school year thereafter, the statewide assessment of reading shall include a component of writing as determined by the state board.

(6) For no later than school year 2010-11 and for each school year thereafter, the state board shall prescribe a statewide assessment of mathematics. The statewide assessment of mathematics shall include assessment instruments for each of the grade levels three through eight and for one grade in high school and standards adopted by the state board pursuant to section 79-760.01.

(7) For no later than school year 2011-12 and each school year thereafter, the state board shall prescribe a statewide assessment of science. The statewide assessment of science shall include assessment instruments for each of the grade levels selected by the state board and standards adopted by the state board pursuant to section 79-760.01. The grade levels shall include at least one grade in elementary school, one grade in middle school or junior high school, and one grade in high school.

(8) The department shall conduct studies to verify the technical quality of assessment instruments and demonstrate the comparability of assessment instrument results required by the act. The department shall annually report such findings to the Governor, the Legislature, and the state board. The report submitted to the Legislature shall be submitted electronically.

(9) The state board shall recommend national assessment instruments for the purpose of national comparison. Beginning with school year 2017-18, the state board shall select a national assessment instrument that is also used as a standard college admission test which shall be administered to students in the eleventh grade in every public high school in each school district. Each school district shall report individual student data for scores and sub-scores according to procedures established by the state board and the department pursuant to section 79-760.05.

(10) The aggregate results of assessment instruments and national assessment instruments shall be reported by the district on a building basis to the public in that district, to the learning community coordinating council if such district is a member of a learning community, and to the department. Each learning community shall also report the aggregate results of any assessment instruments and national assessment instruments to the public in that learning community and to the department. The department shall report the aggregate results of any assessment instruments and national assessment instruments on a learning community, district, and building basis as part of the statewide assessment and reporting system.

(11)(a) The assessment and reporting plan shall:

- (i) Provide for the confidentiality of the results of individual students; and
- (ii) Include all public schools and all public school students.

(b) The state board shall adopt criteria for the inclusion of students with disabilities, students entering the school for the first time, and students with limited English proficiency.

The department may determine appropriate accommodations for the assessment of students with disabilities or any student receiving special education programs and services pursuant to section 79-1139. Alternate academic achievement standards in reading, mathematics, and science and alternate

assessment instruments aligned with the standards may be among the accommodations for students with severe cognitive disabilities.

(12) The state board may select additional grade levels, subject areas, or assessment instruments for statewide assessment consistent with federal requirements.

(13) The state board shall not require school districts to administer assessments or assessment instruments which are not consistent with the act.

(14) The state board may appoint committees of teachers, from each appropriate subject area, and administrators to assist in the development of statewide assessment instruments required by the act.

**Source:** Laws 2007, LB653, § 4; Laws 2008, LB1157, § 4; Laws 2012, LB782, § 152; Laws 2016, LB930, § 3; Laws 2016, LB1066, § 8.

**79-760.06 Accountability system; combine multiple indicators; State Department of Education; powers; duties; designation of priority schools.**

(1) On or before August 1, 2012, the State Board of Education shall establish an accountability system to be used to measure the performance of individual public schools and school districts. The accountability system shall combine multiple indicators, including, but not limited to, graduation rates, student growth and student improvement on the assessment instruments provided in section 79-760.03, and other indicators of the performance of public schools and school districts as established by the state board.

(2) Beginning with the reporting of data from school year 2014-15, the indicators selected by the state board for the accountability system shall be combined annually into a school performance score and district performance score. The state board shall establish levels of performance based upon school performance scores and district performance scores in order to annually classify and report the performance of public schools and school districts beginning with the reporting of data from school year 2014-15. The department shall classify and report the performance of public schools and school districts annually on or before December 31 of each calendar year.

(3) The state board shall designate priority schools based on such classification. Schools designated as priority schools shall be at the lowest performance level at the time of the initial priority school designation. Schools designated as priority schools shall remain priority schools until such designation is removed by the state board. No less than three schools may have a priority school designation at one time. Schools designated as priority schools shall be subject to the requirements of section 79-760.07. The State Department of Education shall annually report the performance level of individual public schools and school districts as part of the statewide assessment and reporting system.

**Source:** Laws 2012, LB870, § 2; Laws 2014, LB438, § 2; Laws 2015, LB525, § 13; Laws 2018, LB1081, § 8; Laws 2018, LB1110, § 1. Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB1081, section 8, with LB1110, section 1, to reflect all amendments.

**79-760.07 Priority school; intervention team; members; duties; expenses; develop progress plan; contents; compliance required; review; school board; duties; Commissioner of Education; report; contents.**

(1) For each school designated as a priority school, the Commissioner of Education shall appoint an intervention team. The intervention team shall assist the school district with diagnosing issues that negatively affect student achievement in the priority school, designing and implementing strategies to address such issues through the progress plan, and developing measurable indicators of progress.

(2) The intervention team shall be composed of up to five people with the education and experience to carry out the responsibilities of the team. Any member of the intervention team may receive pay for work performed in conjunction with his or her duties as a member of such team. Such pay shall be determined and provided (a) by the State Department of Education for any member of the intervention team who is not an employee of the school district containing the priority school for which such intervention team is appointed or (b) by the school district containing the priority school for which the intervention team is appointed for any member of the intervention team who is an employee of such school district. Any member of the intervention team who is eligible to receive pay from the department pursuant to subdivision (a) of this subsection shall also be eligible for reimbursement of actual and necessary expenses incurred in carrying out his or her duties as a member of such team as provided in sections 81-1174 to 81-1177. Reimbursement of actual and necessary expenses for any member of the intervention team who is an employee of the school district containing the priority school for which the intervention team is appointed shall be provided in accordance with the policies and procedures of such school district.

(3) The intervention team, in collaboration with the priority school staff and the administration and school board of the school district with control of the priority school, shall develop a progress plan for approval by the State Board of Education. Any progress plan shall include specific actions required by the school and the district in order to remove its classification as a priority school, including any required level of progress as indicated by the measurable indicators.

(4) Compliance with progress plans shall be a requirement to maintain accreditation for any school district that contains a priority school. The state board shall annually review any progress plans and determine whether any modifications are needed. If a school has been designated as a priority school for the third consecutive school year, the state board shall reevaluate the progress plan to determine if (a) a significant revision of the progress plan is necessary, (b) an entirely new progress plan is developed, or (c) an alternative administrative structure is warranted.

(5) The school board of a school district containing a priority school as designated pursuant to section 79-760.06 shall provide the intervention team with full access to the priority school, priority school staff, the school district, school district staff, academic information, financial information, and any other requested information.

(6) The Commissioner of Education shall annually report to the Governor and electronically to the Clerk of the Legislature and the chairperson of the Education Committee of the Legislature on all schools designated as priority schools. The report shall include the name of the school, the grades included in the priority school designation, the name of the school district, the years for

which the school was designated a priority school, a summary of the progress plan, and the level of progress as indicated by the measurable indicators.

**Source:** Laws 2014, LB438, § 3; Laws 2018, LB1081, § 9.  
Effective date July 19, 2018.

**79-761 Mentor teacher programs; State Board of Education; duties.**

The State Board of Education shall develop guidelines for mentor teacher programs in local systems in order to provide ongoing support for individuals entering the teaching profession. Mentor teachers shall not participate in the formal evaluation of beginning teachers which shall be the responsibility of school administrators. Local systems shall identify criteria for selecting excellent, experienced, and qualified teachers to be participants in the local system mentor teacher program which are consistent with the guidelines developed by the State Board of Education.

**Source:** Laws 1998, LB 1228, § 5; Laws 2006, LB 1208, § 3; Laws 2015, LB525, § 14.

(n) CENTER FOR STUDENT LEADERSHIP  
AND EXPANDED LEARNING ACT

**79-772 Act, how cited.**

Sections 79-772 to 79-775 shall be known and may be cited as the Center for Student Leadership and Expanded Learning Act.

**Source:** Laws 2009, LB476, § 1; Laws 2016, LB1066, § 9.

**79-773 Legislative findings.**

(1) The Legislature finds that:

(a) Since 1928, Nebraska students have benefited from participation in career education student organizations;

(b) Research conducted in 2007 by the National Research Center for Career and Technical Education has documented a positive association between career education student organizations participation and academic motivation, academic engagement, grades, career self-efficacy, college aspirations, and employability skills;

(c) Long-term sustainability of the state associations of career education student organizations has a positive impact on Nebraska students and is in the best interests of the economic well-being of the State of Nebraska;

(d) Students in Nebraska schools should have opportunities to acquire academic, technical, and employability knowledge and skills needed to meet the demands of a global economy;

(e) Students benefit from the opportunities provided by career education student organizations to develop and demonstrate leadership skills that prepare them for civic, economic, and entrepreneurial leadership roles;

(f) Students benefit from engaging in expanded-learning experiences outside their normal classrooms that allow them to apply their knowledge and skill in authentic situations;

(g) There is a need to establish and expand strategies and programs that enable young people to be college-ready and career-ready, build assets, and remain as productive citizens in their communities; and

(h) There is a need to establish a statewide structure that supports existing and emerging curriculum and program offerings with student leadership development opportunities and experiences.

(2) The Legislature recognizes that Nebraska must provide opportunities to educate young people with leadership and employability skills to (a) meet the needs of business and industry and remain economically viable, (b) educate and nurture future entrepreneurs for successful business ventures to diversify and strengthen our economic base, (c) foster rewarding personal development experiences that involve students in their communities and encourage them to return to their communities after completing postsecondary education, and (d) invest in and support the leadership development of our future state and community civic leaders.

**Source:** Laws 2009, LB476, § 2; Laws 2016, LB1066, § 10.

#### **79-774 Terms, defined.**

For purposes of the Center for Student Leadership and Expanded Learning Act:

(1) Career and technical education means educational programs that support the development of knowledge and skill in the following areas: Agriculture, food, and natural resources; architecture and construction; arts, audiovisual, technology, and communication; business management and administration; education and training; finance; government and public administration; health science; hospitality and tourism; human services; information technology; law, public safety, and security; marketing; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics;

(2) Career education student organization means an organization for individuals enrolled in a career and technical education program that engages career and technical education activities as an integral part of the instructional program; and

(3) Expanded learning means school-based or school-linked activities and programs that utilize school-community partnerships to expand opportunities for students to participate in educational activities outside the normal classroom.

**Source:** Laws 2009, LB476, § 3; Laws 2016, LB1066, § 11.

#### **79-775 Purpose of act; Center for Student Leadership and Expanded Learning; duties.**

The purpose of the Center for Student Leadership and Expanded Learning Act is to provide state support for establishing and maintaining within the State Department of Education the Center for Student Leadership and Expanded Learning. The center shall provide ongoing financial and administrative support for state leadership and administration of Nebraska career education student organizations, create and coordinate opportunities for students to participate in educational activities outside the normal classroom, and partner

with state and local organizations to share research and identify best practices that can be disseminated to schools and community organizations.

**Source:** Laws 2009, LB476, § 4; Laws 2016, LB1066, § 12.

**ARTICLE 8  
TEACHERS AND ADMINISTRATORS**

(c) TENURE

Section  
79-828. Probationary certificated employee; probationary period; evaluation; contract amendment or nonrenewal; procedure.

(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

79-850. Terms, defined.

(f) PROFESSIONAL PRACTICES COMMISSION

79-870. Commission; board; witnesses; subpoena; commissioner; issue writs of subpoena; board; modify or quash.

(l) MISCELLANEOUS

79-898. Repealed. Laws 2017, LB62, § 1.

79-899. Repealed. Laws 2017, LB62, § 1.

79-8,110. Repealed. Laws 2018, LB377, § 87.

(p) EXCELLENCE IN TEACHING ACT

79-8,134. Attracting Excellence to Teaching Program; purposes.

79-8,137. Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.

79-8,137.01. Enhancing Excellence in Teaching Program; created; terms, defined.

79-8,137.02. Enhancing Excellence in Teaching Program; purposes.

79-8,137.03. Enhancing Excellence in Teaching Program; administration; eligible student; loans.

79-8,137.04. Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.

79-8,137.05. Excellence in Teaching Cash Fund; created; use; investment.

(r) INCENTIVES FOR VOLUNTARY TERMINATION

79-8,142. Incentive for voluntary termination; school district; duties.

(c) TENURE

**79-828 Probationary certificated employee; probationary period; evaluation; contract amendment or nonrenewal; procedure.**

(1) The contract of a probationary certificated employee shall be deemed renewed and remain in full force and effect unless amended or not renewed in accordance with sections 79-824 to 79-842.

(2) The purpose of the probationary period is to allow the employer an opportunity to evaluate, assess, and assist the employee's professional skills and work performance prior to the employee obtaining permanent status.

All probationary certificated employees employed by any class of school district shall, during each year of probationary employment, be evaluated at least once each semester, unless the probationary certificated employee is a superintendent, in accordance with the procedures outlined below:

The probationary certificated employee shall be observed and evaluation shall be based upon actual classroom observations for an entire instructional period. If deficiencies are noted in the work performance of any probationary certificated employee, the evaluator shall provide the probationary certificated em-

ployee at the time of the observation with a list of deficiencies and a list of suggestions for improvement and assistance in overcoming the deficiencies. The evaluator shall also provide the probationary certificated employee with follow-up evaluations and assistance when deficiencies remain.

If the probationary certificated employee is a superintendent, he or she shall be evaluated twice during the first year of employment and at least once annually thereafter.

(3) If the school board or the superintendent or superintendent's designee determines that it is appropriate to consider whether the contract of a probationary certificated employee or the superintendent should be amended or not renewed for the next school year, such certificated employee shall be given written notice that the school board will consider the amendment or nonrenewal of such certificated employee's contract for the ensuing school year. Upon request of the certificated employee, notice shall be provided which shall contain the written reasons for such proposed amendment or nonrenewal and shall be sufficiently specific so as to provide such employee the opportunity to prepare a response and the reasons set forth in the notice shall be employment related.

(4) The school board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal is not for constitutionally impermissible reasons, and such nonrenewal shall be in accordance with sections 79-824 to 79-842. Amendment or nonrenewal for reason of reduction in force shall be subject to sections 79-824 to 79-842 and 79-846 to 79-849.

(5) Within seven calendar days after receipt of the notice, the probationary certificated employee may make a written request to the secretary of the school board or to the superintendent or superintendent's designee for a hearing before the school board.

(6) Prior to scheduling of action or a hearing on the matter, if requested, the notice of possible amendment or nonrenewal and the reasons supporting possible amendment or nonrenewal shall be considered a confidential employment matter as provided in sections 79-539, 79-8,109, and 84-1410 and shall not be released to the public or any news media.

(7) At any time prior to the holding of a hearing or prior to final determination by the school board to amend or not renew the contract involved, the probationary certificated employee may submit a letter of resignation for the ensuing year, which resignation shall be accepted by the school board.

(8) The probationary certificated employee shall be afforded a hearing which shall not be required to meet the requirements of a formal due process hearing as set forth in section 79-832 but shall be subject to section 79-834.

**Source:** Laws 1982, LB 259, § 5; Laws 1986, LB 534, § 1; R.S.1943, (1994), § 79-12,111; Laws 1996, LB 900, § 458; Laws 2012, LB870, § 5; Laws 2018, LB377, § 60.  
Operative date January 1, 2019.

(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

**79-850 Terms, defined.**

For purposes of sections 79-850 to 79-858:

(1) Reorganized school district means: (a) Any expanded or altered school district, organized or altered by any of the means provided by Nebraska law including, but not limited to, the methods provided by the Reorganization of School Districts Act, the Learning Community Reorganization Act, or section 79-407, 79-413, 79-415, or 79-473; or (b) any school district to be formed in the future if the petition or plan for such reorganized school district has been approved pursuant to any of the methods set forth in subdivision (1)(a) of this section when the effective date of such reorganization is prospective. For purposes of this subdivision, a petition or plan shall be deemed approved when the last legal action has been taken, as prescribed in section 79-413 or 79-450, necessary to effect the changes in boundaries as set forth in the petition or plan; and

(2) Unified system means a unified system as defined in section 79-4,108 recognized by the State Department of Education pursuant to subsection (3) of such section, which employs certificated staff.

**Source:** Laws 1980, LB 844, § 1; Laws 1985, LB 662, § 36; Laws 1988, LB 520, § 5; R.S.1943, (1994), § 79-12,104; Laws 1996, LB 900, § 480; Laws 1997, LB 347, § 25; Laws 1998, LB 1219, § 1; Laws 1999, LB 272, § 90; Laws 2005, LB 126, § 43; Laws 2006, LB 1024, § 59; Referendum 2006, No. 422; Laws 2018, LB377, § 61. Operative date January 1, 2019.

#### Cross References

Learning Community Reorganization Act, see section 79-4,117.

Reorganization of School Districts Act, see section 79-432.

### (f) PROFESSIONAL PRACTICES COMMISSION

**79-870 Commission; board; witnesses; subpoena; commissioner; issue writs of subpoena; board; modify or quash.**

In the performance of their functions under sections 79-859 to 79-871, the commission and the board may subpoena witnesses and place them under oath. The commissioner may issue writs of subpoena, including subpoena duces tecum, requiring the attendance of witnesses and the production of books, records, and documents, and place witnesses under oath to take sworn testimony as part of any investigation. The board may modify or quash any subpoena issued by the commissioner.

**Source:** Laws 1967, c. 549, § 6, p. 1814; Laws 1992, LB 1001, § 29; Laws 1993, LB 348, § 40; R.S.1943, (1994), § 79-1285; Laws 1996, LB 900, § 495; Laws 2018, LB1081, § 10. Effective date July 19, 2018.

### (l) MISCELLANEOUS

**79-898 Repealed. Laws 2017, LB62, § 1.**

**79-899 Repealed. Laws 2017, LB62, § 1.**

**79-8,110 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.



## (p) EXCELLENCE IN TEACHING ACT

**79-8,134 Attracting Excellence to Teaching Program; purposes.**

The purposes of the Attracting Excellence to Teaching Program are to:

- (1) Attract outstanding students to major in shortage areas at the teacher education programs of Nebraska's postsecondary educational institutions;
- (2) Retain resident students and graduates as teachers in the accredited school districts, educational service units, and private schools or approved private schools of Nebraska; and
- (3) Establish a loan contract that requires a borrower to obtain employment as a teacher in this state after graduation.

**Source:** Laws 2000, LB 1399, § 17; Laws 2009, LB547, § 5; Laws 2015, LB519, § 3.

**79-8,137 Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.**

(1)(a) Prior to receiving any money from a loan pursuant to the Attracting Excellence to Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall be exempt from the requirements of sections 73-501 to 73-510.

(b) For eligible students who applied for the first time prior to April 23, 2009, the contract shall require that if (i) the borrower is not employed as a teacher in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan must be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract, and an appropriate penalty as determined by the department may be assessed. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(c) For eligible students who apply for the first time on or after April 23, 2009, the contract shall require that if (i) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska and teaching at least a portion of the time in the shortage area for which the loan was received for a time period equal to the number of years required for loan forgiveness pursuant to subsection (3) of this section or is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to continue to be an eligible student,

repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rule and regulation provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(2) If the borrower applied for the first time prior to April 23, 2009, and (a) successfully completes the teacher education program and becomes certified pursuant to sections 79-806 to 79-815, (b) becomes employed as a teacher in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. For each year that the borrower teaches in Nebraska pursuant to the contract, payments shall be forgiven in an amount equal to the amount borrowed for one year, except that if the borrower teaches in a school district that is in a local system classified as very sparse as defined in section 79-1003 or teaches in a school district in which at least forty percent of the students are poverty students as defined in section 79-1003, payments shall be forgiven each year in an amount equal to the amount borrowed for two years.

(3)(a) If the borrower applies for the first time on or after April 23, 2009, and (i) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to sections 79-806 to 79-815 with an endorsement in the shortage area for which the loan was received, (ii) becomes employed as a full-time teacher teaching at least a portion of the time in the shortage area for which the loan was received in an approved or accredited school in this state within six months of becoming certified, and (iii) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract.

(b) Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building that provides free meals to all students pursuant to the community eligibility provision, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

**Source:** Laws 2000, LB 1399, § 20; Laws 2003, LB 685, § 22; Laws 2008, LB988, § 7; Laws 2009, LB547, § 7; Laws 2012, LB858, § 14; Laws 2013, LB497, § 4; Laws 2015, LB519, § 4; Laws 2015, LB525, § 15.

**79-8,137.01 Enhancing Excellence in Teaching Program; created; terms, defined.**

The Enhancing Excellence in Teaching Program is created. For purposes of the Enhancing Excellence in Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible graduate program means a program of study offered by an eligible institution which results in obtaining a graduate degree or a graduate course of study leading to an endorsement in a shortage area specified by the State Board of Education;

(3) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by a regional accrediting agency recognized by the United States Department of Education as determined to be acceptable by the State Board of Education, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the Enhancing Excellence in Teaching Program pursuant to rules and regulations;

(4) Eligible student means an individual who (a) is a certificated teacher employed to teach in an approved or accredited school in Nebraska, (b) is enrolled in an eligible graduate program, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d) is majoring in a shortage area, curriculum and instruction, a subject area in which the individual already holds a secular teaching endorsement, or a subject area that will result in an additional secular teaching endorsement which the superintendent of the school district or head administrator of the private, denominational, or parochial school employing the individual believes will be beneficial to the students of such school district or school as evidenced by a statement signed by the superintendent or head administrator, and (e) is applying for a loan pursuant to the Enhancing Excellence in Teaching Program to be received at a time other than during fiscal year 2011-12 or 2012-13;

(5) Majoring in a shortage area or subject area means pursuing a degree or course of study which will allow an individual to be properly endorsed to teach in such shortage area or subject area; and

(6) Shortage area means a secular field of teaching or endorsement area for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the Enhancing Excellence in Teaching Program.

**Source:** Laws 2009, LB547, § 8; Laws 2010, LB1071, § 8; Laws 2011, LB333, § 7; Laws 2014, LB967, § 9; Laws 2015, LB519, § 5; Laws 2016, LB1066, § 13.

### **79-8,137.02 Enhancing Excellence in Teaching Program; purposes.**

The purposes of the Enhancing Excellence in Teaching Program are to:

(1) Retain teachers in the accredited school districts, educational service units, and private schools or approved private schools of Nebraska;

(2) Improve the skills of existing teachers in Nebraska through the graduate education or endorsement programs of Nebraska's postsecondary educational institutions; and

(3) Establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from an eligible graduate or endorsement program.

**Source:** Laws 2009, LB547, § 9; Laws 2010, LB1071, § 9; Laws 2015, LB519, § 6.

**79-8,137.03 Enhancing Excellence in Teaching Program; administration; eligible student; loans.**

(1) The department shall administer the Enhancing Excellence in Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Agree to complete an eligible graduate program at an eligible institution and to complete the program on which the applicant's eligibility is based as determined by the department; and

(b) Commit to teach in an accredited or approved public or private school in Nebraska upon successful completion of the eligible graduate program for which the applicant is applying to the Enhancing Excellence in Teaching Program and to maintaining certification pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than one hundred seventy-five dollars per credit hour. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through the department. Loans shall be funded pursuant to section 79-8,137.05.

**Source:** Laws 2009, LB547, § 10; Laws 2010, LB1071, § 10; Laws 2015, LB519, § 7; Laws 2016, LB1066, § 14.

**79-8,137.04 Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.**

(1) Prior to receiving any money from a loan pursuant to the Enhancing Excellence in Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall be exempt from the requirements of sections 73-501 to 73-510. The contract shall require that if (a) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section or (b) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subsection based upon mitigating circumstances.

(2)(a) If the borrower (i) successfully completes the eligible graduate program for which the borrower is receiving a forgivable loan pursuant to the Enhancing Excellence in Teaching Program and maintains certification pursuant to sections 79-806 to 79-815, (ii) maintains employment as a teacher in an approved or accredited school in this state, and (iii) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract.

(b) For recipients who received funds for the first time prior to July 1, 2016, beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building that provides free meals to all students pursuant to the community eligibility provision, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

(c) For recipients who received funds for the first time on or after July 1, 2016, beginning after the first two years of teaching full-time in Nebraska following completion of the eligible graduate program for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to one thousand five hundred dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, teaches in a school building that provides free meals to all students pursuant to the community eligibility provision, or teaches in an accredited private school or educational service unit or an approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to one thousand five hundred dollars for the first year of loan forgiveness and three thousand dollars for each year of loan forgiveness thereafter.

**Source:** Laws 2009, LB547, § 11; Laws 2010, LB1071, § 11; Laws 2012, LB858, § 15; Laws 2013, LB497, § 5; Laws 2015, LB519, § 8; Laws 2015, LB525, § 16; Laws 2016, LB1066, § 15.

**79-8,137.05 Excellence in Teaching Cash Fund; created; use; investment.**

(1) The Excellence in Teaching Cash Fund is created. The fund shall consist of appropriations by the Legislature, transfers pursuant to section 9-812, and loan repayments, penalties, and interest payments received in the course of administering the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

(2) For all fiscal years, the department shall allocate on an annual basis up to four hundred thousand dollars in the aggregate of the funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students. The department shall allocate on an annual basis up to eight hundred thousand dollars of the remaining available funds to be distributed to eligible students for the Enhancing Excellence in Teaching Program. Funding amounts

granted in excess of one million two hundred thousand dollars shall be evenly divided for distribution between the two programs.

(3) Any money remaining in the fund on August 1, 2021, shall be transferred to the Nebraska Education Improvement Fund on such date.

(4) Any money in the Excellence in Teaching Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2000, LB 1399, § 19; Laws 2001, Spec. Sess., LB 3, § 6; R.S.1943, (2008), § 79-8,136; Laws 2009, LB547, § 12; Laws 2011, LB333, § 8; Laws 2014, LB967, § 10; Laws 2015, LB519, § 9.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### (r) INCENTIVES FOR VOLUNTARY TERMINATION

#### **79-8,142 Incentive for voluntary termination; school district; duties.**

(1) A school district may agree to pay incentives to a certificated employee in exchange for a voluntary termination of employment.

(2) For purposes of this section, incentives paid in exchange for a voluntary termination of employment include any amount paid, except pursuant to the Retirement Incentive Plan or Staff Development Assistance agreement required under sections 79-854 to 79-856 for school districts involved in a unification or reorganization, to or on behalf of any certificated staff member in exchange for a voluntary termination of employment, including, but not limited to, early retirement inducements and costs to the school district for insurance coverage for such certificated staff member or any member of such certificated staff member's family.

(3) Incentives paid to a certificated teacher in exchange for a voluntary termination of employment shall be a qualified voluntary termination incentive for a certificated teacher for purposes of sections 77-3442 and 79-1028.01 if:

(a) All current and future incentives paid by the school district to such certificated teacher for such voluntary termination of employment do not exceed thirty-five thousand dollars in total and such school district has not and shall not pay any other incentives to such certificated teacher for any voluntary termination of employment;

(b) All current and future incentives for such voluntary termination of employment are paid within five years after such voluntary termination of employment or prior to such certificated teacher becoming eligible for medicare, whichever occurs first;

(c) Such school district has, to the satisfaction of the State Board of Education, demonstrated that the payment of such incentives in exchange for a voluntary termination of employment will result in a net savings in salary and benefit costs to the school district over a five-year period; and

(d) Such incentives to be paid in exchange for a voluntary termination of employment were not included in any collective-bargaining agreement.

(4) Each school district shall report all incentives paid in exchange for voluntary terminations of employment on the annual financial report in the manner specified by the department.

(5) The State Board of Education may adopt and promulgate rules and regulations to carry out the purposes of this section.

**Source:** Laws 2017, LB512, § 11.

## ARTICLE 9

### SCHOOL EMPLOYEES RETIREMENT SYSTEMS

#### (a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

##### Section

- 79-902. Terms, defined.
- 79-904. School retirement system; administration; retirement board; powers and duties; rules and regulations.
- 79-904.01. Board; power to adjust contributions and benefits; repayment of benefit; overpayment of benefits; investigatory powers; subpoenas.
- 79-905. Retirement board; duties.
- 79-907. Statement of information; board; powers and duties.
- 79-915. Retirement system; membership; requirements; certain contemplated business transactions regarding retirement system participation; procedures; costs.
- 79-916. Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.
- 79-918. Repealed. Laws 2017, LB415, § 55.
- 79-921. Retirement system; membership; termination; employer; duty; member; duty; reinstatement; application for restoration of relinquished creditable service; payment required.
- 79-923. Repealed. Laws 2017, LB415, § 55.
- 79-924. Repurchase relinquished creditable service; credit for prior years of service; payment; rules and regulations; election; provisions applicable.
- 79-926. Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.
- 79-931. Retirement; when; application.
- 79-933.01. Direct rollover; terms, defined; distributee; powers; board; powers.
- 79-933.02. Retirement system; accept payments and rollovers; limitations; board; powers.
- 79-933.03. Contributing member; credit for service in other schools; limitation; procedure; payment.
- 79-933.04. Contributing member; credit for leave of absence; limitation; procedure; payment.
- 79-933.07. Purchase of service credit or repurchase of relinquished creditable service; rules and regulations.
- 79-933.08. Purchase of service credit within twelve months of retirement; agreement authorized.
- 79-934. Formula annuity retirement allowance; eligibility; formula; payment.
- 79-935. Retirement; increase in benefits; when applicable.
- 79-948. Retirement benefits; exemption from taxation and legal process; exception.
- 79-951. Retirement; disability; conditions; application; medical examination; waiver.
- 79-954. Retirement; disability beneficiary; restoration to active service; effect.
- 79-958. Employee; employer; required deposits and contributions.
- 79-966. School Retirement Fund; state deposits; amount; determination; contingent state deposit; how calculated; hearing.

## Section

## (b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

- 79-978. Terms, defined.
- 79-978.01. Act, how cited.
- 79-979. Class V school district; employees' retirement system; established.
- 79-980. Employees retirement system; administration; board of trustees; members; terms; vacancy; expenses; liability.
- 79-981. Employees retirement system; board of trustees; rules and regulations; administrator; employees compensation; records required.
- 79-982. Employees retirement system; board of trustees; meetings; duties.
- 79-982.01. Employees retirement system; board of trustees; duties.
- 79-982.02. Employees retirement system; investment of assets; board of trustees; duties; plan for transition of investment authority; contents; costs, fees, and expenses; state investment officer; report.
- 79-983. Employees retirement system; administrator; appointment; retirement system staff.
- 79-984. Employees retirement system; actuary; duties.
- 79-985. Employees retirement system; legal advisor.
- 79-986. Employees retirement system; school district as treasurer; when; duties; State Treasurer as treasurer; when; duties.
- 79-987. Employees retirement system; audits; cost; report.
- 79-988.01. Repealed. Laws 2016, LB447, § 54.
- 79-989. Employees retirement system; board of education; records available.
- 79-990. Employees retirement system; time served in armed forces or on leave of absence; resignation for maternity purposes; effect.
- 79-991. Employees retirement system; member; prior service credit; how obtained.
- 79-992. Employees retirement system; termination of employment; refunds; reemployment.
- 79-992.01. Termination of employment; employer; duties; member; duties.
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- 79-996. Contributions; how paid.
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- 79-9,100. Employees retirement system; formula retirement annuity; computation.
- 79-9,100.01. Employees retirement system; annuity reductions; when; computation.
- 79-9,102. Employees retirement system; annuity or other benefit; limitations.
- 79-9,103. Annuity payment; cost-of-living adjustments; additional adjustments.
- 79-9,104. Employees retirement system; annuities; benefits; exempt from claims of creditors; exceptions.
- 79-9,105. Employees retirement system; member; disability; benefits.
- 79-9,107. Employees retirement system; funds; investment; violations; penalty.
- 79-9,108. Employees retirement system; funds; investment.
- 79-9,109. Employees retirement system; investments; default of principal or interest; trustees; powers and duties.
- 79-9,111. Employees retirement system; investments; board of trustees; powers and duties; state investment officer; powers and duties.
- 79-9,113. Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.
- 79-9,115. Employees retirement system; Class V School Employees Retirement Fund; created; use; expenses; payment.
- 79-9,117. Board of trustees; establish preretirement planning program; for whom; required information; funding; attendance; fee.

## (a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

**79-902 Terms, defined.**

For purposes of the School Employees Retirement Act, unless the context otherwise requires:



(1) Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the School Retirement Fund together with regular interest thereon, compounded monthly, quarterly, semiannually, or annually;

(2)(a) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment.

(b) For a school employee hired before July 1, 2017, the determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using twenty-five percent of the male table and seventy-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations except when a lump-sum settlement is made to an estate.

(c) For a school employee hired on or after July 1, 2017, or rehired on or after July 1, 2017, after termination of employment and being paid a retirement benefit or taking a refund of contributions, the determinations shall be based on a unisex mortality table and an interest rate specified by the board. Both the mortality table and the interest rate shall be recommended by the actuary and approved by the retirement board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table, interest rate, and actuarial factors in effect on the school employee's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate.

(d) If the lump-sum settlement is made to an estate, the interest rate will be determined by the AAA-rated segment of the Bloomberg Barclays Long U.S. Corporate Bond Index as of the prior June 30, rounded to the next lower quarter percent. If the AAA-rated segment of the Bloomberg Barclays Long U.S. Corporate Bond Index is discontinued or replaced, a substitute index shall be selected by the board which shall be a reasonably representative index;

(3) Beneficiary means any person in receipt of a school retirement allowance or other benefit provided by the act;

(4)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year and includes (i) overtime pay, (ii) member retirement contributions, (iii) retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, and (iv) amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation does not include (i) fraudulently obtained amounts as determined by the retirement board, (ii) amounts for accrued unused sick leave or accrued unused vacation leave converted to cash payments, (iii) insurance premiums converted into cash payments, (iv) reimbursement for expenses incurred, (v) fringe benefits, (vi) per diems paid as expenses, (vii) bonuses for services not actually rendered, (viii) early retirement inducements, (ix) cash awards, (x) severance pay, or (xi) employer contributions made for the purposes of separation payments made at retirement.

(c) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation

shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(5) County school official means (a) until July 1, 2000, the county superintendent or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate and (b) on or after July 1, 2000, the county superintendent, county school administrator, or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate;

(6)(a) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06 and 79-933.08, and all service rendered while a contributing member of the retirement system;

(b) For employees hired prior to July 1, 2018, creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, service years for which member contributions are withdrawn and not repaid by the member, service rendered for which the retirement board determines that the member was paid less in compensation than the minimum wage as provided in the Wage and Hour Act, or service which the board determines was rendered with the intent to defraud the retirement system;

(c) For employees hired on or after July 1, 2018, creditable service includes working days, used accrued sick days, used accrued vacation days, federal and state holidays, and jury duty leave for which the member is paid full compensation by the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, service years for which member contributions are withdrawn and not repaid by the member, service rendered for which the retirement board determines that the member was paid less in compensation than the minimum wage as provided in the Wage and Hour Act, service which the board determines was rendered with the intent to defraud the retirement system, or any other type of leave not expressly included in this subdivision; and

(d) Creditable service does not include service provided to an employer in the retirement system provided under the Class V School Employees Retirement Act;

(7) Current benefit means the initial benefit increased by all adjustments made pursuant to the School Employees Retirement Act;

(8) Disability means an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or be of a long-continued and indefinite duration;

(9) Disability retirement allowance means the annuity paid to a person upon retirement for disability under section 79-952;

(10) Disability retirement date means the first day of the month following the date upon which a member's request for disability retirement is received on a

retirement application provided by the retirement system if the member has terminated employment in the school system and has complied with sections 79-951 to 79-954 as such sections refer to disability retirement;

(11) Early retirement inducement means, but is not limited to:

(a) A benefit, bonus, or payment to a member in exchange for an agreement by the member to terminate from employment;

(b) A benefit, bonus, or payment paid to a member in addition to the member's retirement benefit;

(c) Lump-sum or installment cash payments, except payments for accrued unused leave converted to cash payments;

(d) An additional salary or wage component of any kind that is being paid as an incentive to leave employment and not for personal services performed for which creditable service is granted;

(e) Partial or full employer payment of a member's health, dental, life, or long-term disability insurance benefits or cash in lieu of such insurance benefits that extend beyond the member's termination of employment and contract of employment dates. This subdivision does not apply to any period during which the member is contributing to the retirement system and being awarded creditable service; and

(f) Any other form of separation payments made by an employer to a member at termination, including, but not limited to, purchasing retirement annuity contracts for the member pursuant to section 79-514, depositing money for the member in an account established under section 403(b) of the Internal Revenue Code except for payments for accrued unused leave, or purchasing service credit for the member pursuant to section 79-933.08;

(12) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the School Employees Retirement Act. Such credit shall not be included as years of creditable service in the benefit calculation;

(13) Emeritus member means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b) who has thereafter been reemployed in any capacity by a public school, a Class V school district, or a school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

(14) Employer means the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation;

(15)(a) Final average compensation means:

(i) Except as provided in subdivision (ii) of this subdivision:

(A) The sum of the member's total compensation during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six; or

(B) If a member has such compensation for less than thirty-six months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor; and

(ii) For an employee who became a member on or after July 1, 2013:

(A) The sum of the member's total compensation during the five twelve-month periods of service as a school employee in which such compensation was the greatest divided by sixty; or

(B) If a member has such compensation for less than sixty months, the sum of the member's total compensation in all months divided by the total number of months of his or her creditable service therefor.

(b) Payments under the Retirement Incentive Plan pursuant to section 79-855 and Staff Development Assistance pursuant to section 79-856 shall not be included in the determination of final average compensation;

(16) Fiscal year means any year beginning July 1 and ending June 30 next following;

(17) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(18) Initial benefit means the retirement benefit calculated at the time of retirement;

(19) Member means any person who has an account in the School Retirement Fund;

(20) Participation means qualifying for and making required deposits to the retirement system during the course of a plan year;

(21) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(22) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;

(23) Public school means any and all schools offering instruction in elementary or high school grades, as defined in section 79-101, which schools are supported by public funds and are wholly under the control and management of the State of Nebraska or any subdivision thereof, including (a) schools or other entities established, maintained, and controlled by the school boards of local school districts, except Class V school districts, (b) any educational service unit, and (c) any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;

(24) Regular employee means an employee hired by a public school or under contract in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis for twenty or more hours per week. An employee hired as described in this subdivision to provide service for less than twenty hours per week but who provides service for an average of twenty hours or more per week in each calendar month of any three calendar months of a plan year shall, beginning with the next full payroll period, commence contri-

butions and shall be deemed a regular employee for all future employment with the same employer;

(25) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(26) Relinquished creditable service means, with respect to a member who has withdrawn his or her accumulated contributions under section 79-955, the total amount of creditable service which such member has given up as a result of his or her election not to remain a member of the retirement system;

(27) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;

(28) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;

(29) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement date means (a) if the member has terminated employment, the first day of the month following the date upon which a member's request for retirement is received on a retirement application provided by the retirement system or (b) if the member has filed a retirement application but has not yet terminated employment, the first day of the month following the date on which the member terminates employment. An application may be filed no more than one hundred twenty days prior to the effective date of the member's initial benefit;

(32) Retirement system means the School Employees Retirement System of the State of Nebraska;

(33) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(34) School employee means a contributing member who earns service credit pursuant to section 79-927. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular employees; (b) regular employees having retired pursuant to the School Employees Retirement Act who subsequently provide compensated service on a regular basis in any capacity; and (c) regular employees hired by a public school on an ongoing basis to assume the duties of other regular employees who are temporarily absent. Substitute employees, temporary employees, and employees who have not attained the age of eighteen years shall not be considered school employees;

(35) School year means one fiscal year which includes not less than one thousand instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of the then legal school year;

(36) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-935. The monthly payments shall be payable at the end of

each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies or in accordance with the payment option chosen by the member;

(37) Service means employment as a school employee and shall not be deemed interrupted by (a) termination at the end of the school year of the contract of employment of an employee in a public school if the employee enters into a contract of employment in any public school, except a school in a Class V school district, for the following school year, (b) temporary or seasonal suspension of service that does not terminate the employee's employment, (c) leave of absence authorized by the employer for a period not exceeding twelve months, (d) leave of absence because of disability, or (e) military service when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under sections 79-951 to 79-953;

(38) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(39) State deposit means the deposit by the state in the retirement system on behalf of any member;

(40) State school official means the Commissioner of Education and his or her professional staff who are required by law or by the State Department of Education to hold a certificate as such term is defined in section 79-807;

(41) Substitute employee means a person hired by a public school as a temporary employee to assume the duties of regular employees due to a temporary absence of any regular employees. Substitute employee does not mean a person hired as a regular employee on an ongoing basis to assume the duties of other regular employees who are temporarily absent;

(42) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(43) Temporary employee means an employee hired by a public school who is not a regular employee and who is hired to provide service for a limited period of time to accomplish a specific purpose or task. When such specific purpose or task is complete, the employment of such temporary employee shall terminate and in no case shall the temporary employment period exceed one year in duration;

(44) Termination of employment occurs on the date on which the member experiences a bona fide separation from service of employment with the member's employer, the date of which separation is determined by the end of the member's contractual agreement or, if there is no contract or only partial fulfillment of a contract, by the employer.

A member shall not be deemed to have terminated employment if the member subsequently provides service to any employer participating in the retirement system provided for in the School Employees Retirement Act within one hundred eighty days after ceasing employment unless such service:

(a) Is bona fide unpaid voluntary service or substitute service, provided on an intermittent basis; or

(b) Is as provided in subsection (2) of section 79-920.

Nothing in this subdivision precludes an employer from adopting a policy which limits or denies employees who have terminated employment from providing voluntary or substitute service within one hundred eighty days after termination.

A member shall not be deemed to have terminated employment if the board determines that a claimed termination was not a bona fide separation from service with the employer or that a member was compensated for a full contractual period when the member terminated prior to the end date of the contract; and

(45) Voluntary service or volunteer means providing bona fide unpaid service to any employer.

**Source:** Laws 1945, c. 219, § 1, p. 638; R.S.Supp., 1947, § 79-2901; Laws 1949, c. 256, § 435, p. 840; Laws 1953, c. 315, § 1, p. 1042; Laws 1961, c. 410, § 1, p. 1229; Laws 1963, c. 469, § 7, p. 1506; Laws 1963, c. 495, § 1, p. 1580; Laws 1965, c. 530, § 1, p. 1663; Laws 1965, c. 531, § 1, p. 1671; Laws 1967, c. 546, § 2, p. 1798; Laws 1969, c. 584, § 84, p. 2396; Laws 1969, c. 735, § 1, p. 2773; Laws 1971, LB 987, § 16; Laws 1975, LB 50, § 1; Laws 1984, LB 971, § 1; Laws 1985, LB 350, § 1; Laws 1986, LB 325, § 1; Laws 1986, LB 311, § 14; Laws 1987, LB 549, § 1; Laws 1988, LB 551, § 10; Laws 1988, LB 1170, § 1; Laws 1989, LB 506, § 9; Laws 1991, LB 549, § 24; Laws 1992, LB 1001, § 32; Laws 1994, LB 833, § 28; Laws 1996, LB 700, § 5; Laws 1996, LB 847, § 27; R.S.1943, (1994), § 79-1501; Laws 1996, LB 900, § 537; Laws 1996, LB 1076, § 13; Laws 1996, LB 1273, § 23; Laws 1997, LB 347, § 26; Laws 1997, LB 623, § 12; Laws 1997, LB 624, § 16; Laws 1997, LB 724, § 3; Laws 1998, LB 1191, § 45; Laws 1999, LB 272, § 91; Laws 1999, LB 538, § 1; Laws 1999, LB 674, § 3; Laws 2000, LB 1192, § 9; Laws 2001, LB 408, § 13; Laws 2002, LB 407, § 22; Laws 2003, LB 451, § 18; Laws 2005, LB 329, § 2; Laws 2005, LB 364, § 8; Laws 2005, LB 503, § 8; Laws 2006, LB 1019, § 8; Laws 2010, LB950, § 11; Laws 2011, LB509, § 17; Laws 2012, LB916, § 19; Laws 2013, LB263, § 13; Laws 2013, LB553, § 3; Laws 2014, LB1042, § 1; Laws 2015, LB446, § 1; Laws 2016, LB790, § 4; Laws 2017, LB415, § 24; Laws 2018, LB1005, § 18.

Operative date April 24, 2018.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.

**Public Employees Retirement Board**, see sections 84-1501 to 84-1513.

**Spousal Pension Rights Act**, see section 42-1101.

**Wage and Hour Act**, see section 48-1209.

**79-904 School retirement system; administration; retirement board; powers and duties; rules and regulations.**

The general administration of the retirement system, except the investment of funds, is hereby vested in the retirement board. The board may, by a majority vote of its members, adopt bylaws and adopt and promulgate rules and regulations, from time to time, to carry out the School Employees Retirement Act. The board shall perform such other duties as may be required to execute the act.

**Source:** Laws 1945, c. 219, § 3, p. 640; R.S.Supp.,1947, § 79-2903; Laws 1949, c. 256, § 437, p. 842; Laws 1967, c. 486, § 42, p. 1530; Laws 1969, c. 584, § 86, p. 2400; Laws 1971, LB 987, § 18; Laws 1991, LB 549, § 26; Laws 1995, LB 369, § 5; Laws 1996, LB 847, § 29; R.S.Supp.,1995, § 79-1503; Laws 1996, LB 900, § 539; Laws 2011, LB509, § 19; Laws 2018, LB1005, § 19.  
Operative date July 19, 2018.

**79-904.01 Board; power to adjust contributions and benefits; repayment of benefit; overpayment of benefits; investigatory powers; subpoenas.**

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the School Employees Retirement Act, the board may refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of a material underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 79-933, such member shall repay the benefit to the retirement system.

(3) The board may adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all



affected persons. All notices shall be sent at the time of or prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

(4) The board shall not refund contributions made on compensation in excess of the limitations imposed by subdivision (4) of section 79-902 or subsection (9) of section 79-934.

**Source:** Laws 1996, LB 1076, § 30; Laws 2011, LB509, § 20; Laws 2013, LB263, § 14; Laws 2015, LB40, § 9; Laws 2015, LB446, § 2; Laws 2016, LB790, § 5; Laws 2017, LB415, § 25; Laws 2018, LB1005, § 20.

Operative date July 19, 2018.

#### **79-905 Retirement board; duties.**

It shall be the duty of the retirement board to:

(1) Determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of dispute between an individual and a department;

(2) Adopt rules and regulations, as the board may deem necessary, for the management of the board;

(3) Prescribe the form in which employers report contributions, hours worked by school employees, payroll information, and other information necessary to carry out the board's duties;

(4) Keep a complete record of all proceedings taken at any meeting of the board;

(5) Employ a director and such assistants and employees as may be necessary in the performance of its duties; and

(6) Obtain actuarial services pursuant to subdivision (2)(e) of section 84-1503.

**Source:** Laws 1967, c. 546, § 3, p. 1801; Laws 1969, c. 584, § 87, p. 2401; Laws 1991, LB 549, § 27; Laws 1995, LB 502, § 2; R.S.Supp., 1995, § 79-1503.01; Laws 1996, LB 900, § 540; Laws 1998, LB 1191, § 46; Laws 2000, LB 1192, § 10; Laws 2018, LB1005, § 21.

Operative date July 19, 2018.

#### **79-907 Statement of information; board; powers and duties.**

(1)(a) On or before October 1, 2001, and at least every two years thereafter, the retirement board shall send to each contributing member of the retirement system by first-class mail, a statement of creditable service, reported salary, and other such information as is determined by the director of the Nebraska Public Employees Retirement Systems to be necessary in calculating the member's retirement benefit.

(b) If the member requests a modification or correction of his or her statement of information, the member shall provide documentation to the board supporting such modification or correction and provide clear and convincing evidence that the statement is in error. The board shall, within sixty days after receipt of the documentation supporting the modification or correction, determine whether the member has proven by clear and convincing evidence that the statement shall be modified or corrected. If the board

determines that the member has provided clear and convincing evidence, the board shall modify or correct the statement. If the board determines that the member has not provided clear and convincing evidence, the board shall deny the modification or correction. In either case, the board shall notify the member. The member may appeal the decision of the board pursuant to section 79-950.

(c) The board has an ongoing fiduciary duty to modify or correct a member's statement if the board discovers an error in the information it has on record. A modification or correction shall be made within sixty days after the error is brought to the attention of the board.

(2) The board may adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

**Source:** Laws 1998, LB 1191, § 47; Laws 2000, LB 1192, § 12; Laws 2004, LB 961, § 1; Laws 2005, LB 144, § 1; Laws 2018, LB1005, § 22.

Operative date July 19, 2018.

**79-915 Retirement system; membership; requirements; certain contemplated business transactions regarding retirement system participation; procedures; costs.**

(1) Persons residing outside of the United States and engaged temporarily as school employees in the State of Nebraska shall not become members of the retirement system.

(2) On and after July 1, 2010, no school employee shall be authorized to participate in the retirement system provided for in the School Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(3)(a) The board may determine that a governmental entity currently participating in the retirement system no longer qualifies, in whole or in part, under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan.

(b)(i) To aid governmental entities in their business decisionmaking process, any governmental entity currently participating in the retirement system contemplating a business transaction that may result in such entity no longer qualifying, in whole or in part, under section 414(d) of the Internal Revenue Code may notify the board in writing as soon as reasonably practicable, but no later than one hundred eighty days before the transaction is to occur.

(ii) The board when timely notified shall, as soon as is reasonably practicable, obtain from its contracted actuary the cost of any actuarial study necessary to determine the potential funding obligation. The board will notify the entity of such cost.

(iii) If such entity pays the board's contracted actuary pursuant to subdivision (3)(c)(vi) of this section for any actuarial study necessary to determine the potential funding obligation, the board shall, as soon as reasonably practicable following its receipt of the actuarial study, (A) determine whether the entity's contemplated business transaction will cause the entity to no longer qualify under section 414(d) of the Internal Revenue Code, (B) determine whether the

contemplated business transaction constitutes a plan termination by the entity, (C) determine the potential funding obligation, (D) determine the administrative costs that will be incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system, and (E) notify the entity of such determinations.

(iv) Failure to timely notify the board pursuant to subdivision (3)(b)(i) of this section may result in the entity being treated as though the board made a decision pursuant to subdivision (3)(a) of this section.

(c) If the board makes a determination pursuant to subdivision (3)(a) of this section, or if the entity engages in the contemplated business transaction reviewed under subdivision (3)(b) of this section that results in the entity no longer qualifying under section 414(d) of the Internal Revenue Code:

(i) The board shall notify the entity that it no longer qualifies under section 414(d) of the Internal Revenue Code within ten business days after the determination;

(ii) The affected plan members shall be immediately considered fully vested;

(iii) The affected plan members shall become inactive within ninety days after the board's determination;

(iv) The entity shall pay to the School Retirement Fund an amount equal to any funding obligation;

(v) The entity shall pay to the Expense Fund an amount equal to any administrative costs incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system; and

(vi) The entity shall pay directly to the board's contracted actuary an amount equal to the cost of any actuarial study necessary to aid the board in determining the amount of such funding obligation, if not previously paid.

(d) For purposes of this subsection:

(i) Business transaction means a merger; consolidation; sale of assets, equipment, or facilities; termination of a division, department, section, or subgroup of the entity; or any other business transaction that results in termination of some or all of the entity's workforce; and

(ii) Funding obligation means the financial liability of the retirement system to provide benefits for the affected plan members incurred by the retirement system due to the entity's business transaction calculated using the methodology and assumptions recommended by the board's contracted actuary and approved by the board. The methodology and assumptions used must be structured in a way that ensures the entity is financially liable for all the costs of the entity's business transaction, and the retirement system is not financially liable for any of the cost of the entity's business transaction.

(e) The board may adopt and promulgate rules and regulations to carry out this subsection including, but not limited to, the methods of notifying the board of pending business transactions, the acceptable methods of payment, and the timing of such payment.

**Source:** Laws 1945, c. 219, § 11, p. 642; R.S.Supp.,1947, § 79-2911; Laws 1949, c. 256, § 445, p. 845; R.S.1943, (1994), § 79-1511; Laws

1996, LB 900, § 550; Laws 2010, LB950, § 13; Laws 2018, LB1005, § 23.

Operative date July 19, 2018.

**79-916 Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.**

(1)(a) On July 1, 2004, the board shall transfer from the School Retirement Fund to the Service Annuity Fund an amount equal to the funded ratio of the retirement system which is equal to the market value of the retirement system assets divided by the actuarial accrued liability of the retirement system, times the actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Beginning July 1, 2013, such actuarial accrued liability shall be determined for each employee on a level percentage of salary basis. On or before July 1 of each fiscal year, the state shall deposit into the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, as of the end of the previous fiscal year of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Based on the fiscal year of the retirement system established pursuant to the Class V School Employees Retirement Act, the administrator of such system shall provide all membership information needed for the actuary engaged by the retirement board to determine the normal cost and the amortization payment of the unfunded actuarial accrued liability, as determined pursuant to section 79-966.01, to be paid by the state to the Service Annuity Fund each fiscal year as required by this subdivision.

(b) At the time of retirement of any employee who is a member of the retirement system established pursuant to the Class V School Employees Retirement Act and who was hired prior to July 1, 2016, the retirement board shall, upon receipt of a certification of the administrator of such retirement system of the name, identification number, date of birth, retirement date, last date of employment, type of retirement, and number of years of service credited to such eligible employee at the date of retirement, transfer to such retirement system from the Service Annuity Fund the actuarial accrued liability of the service annuity to be paid by the state to the eligible employee for the years of service thus certified as provided for members of the School Employees Retirement System of the State of Nebraska under sections 79-933 and 79-952. Such transfer of the actuarial accrued liability to the retirement system established pursuant to the Class V School Employees Retirement Act shall be in lieu of the payment of the service annuity to which the employee would be entitled.

(c) The Service Annuity Fund is created. The fund shall consist of the amounts paid by the state and transferred from the School Retirement Fund pursuant to this section to pay the service annuity to be paid by the state to employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Any money in the Service Annuity Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) In addition to the transfer of the actuarial accrued liability of the service annuity to be paid by the state, the state shall also transfer to the funds of the Class V school district's retirement system an amount determined by multiplying the compensation of all members of such retirement system by the percent specified in subsection (2) of section 79-966 for determining the amount of the state's payment to the School Retirement Fund plus the amount determined under subdivision (1)(b) of section 79-966. The transfer shall be made annually on or before July 1 of each fiscal year.

**Source:** Laws 1945, c. 219, § 12, p. 642; R.S.Supp.,1947, § 79-2912; Laws 1949, c. 256, § 446, p. 845; Laws 1951, c. 292, § 1, p. 970; Laws 1965, c. 530, § 2, p. 1667; Laws 1967, c. 547, § 2, p. 1810; Laws 1967, c. 546, § 5, p. 1802; Laws 1969, c. 735, § 3, p. 2777; Laws 1971, LB 987, § 21; Laws 1984, LB 457, § 1; Laws 1987, LB 549, § 3; Laws 1988, LB 1170, § 2; Laws 1991, LB 549, § 30; R.S. 1943, (1994), § 79-1512; Laws 1996, LB 900, § 551; Laws 1997, LB 623, § 14; Laws 1998, LB 1191, § 48; Laws 2002, LB 407, § 24; Laws 2004, LB 1097, § 23; Laws 2011, LB509, § 21; Laws 2013, LB553, § 4; Laws 2016, LB447, § 8.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

#### **79-918 Repealed. Laws 2017, LB415, § 55.**

**79-921 Retirement system; membership; termination; employer; duty; member; duty; reinstatement; application for restoration of relinquished creditable service; payment required.**

(1) The membership of any person in the retirement system shall cease only if he or she (a) withdraws his or her accumulated contributions under section 79-955, (b) retires on a school or formula or disability retirement allowance, or (c) dies.

(2)(a) The employer shall (i) notify the board in writing of the date upon which a termination of employment has occurred and provide the board with such information as the board deems necessary, (ii) notify the board in writing whether or not a member accepted and received an early retirement inducement, and (iii) submit in writing with the notice of termination of employment and notice of receipt of an early retirement inducement a completed certification by the employer and member under penalty of prosecution pursuant to section 79-949 that, prior to the member's termination, there was no prearranged written or verbal agreement for the member to return to service in any capacity with the same employer.

(b) The member shall submit certification to the board on a form prescribed by the board, under penalty of prosecution pursuant to section 79-949, whether or not the member accepted and received an early retirement inducement from his or her employer.

(c) The board may adopt and promulgate rules and regulations and prescribe forms as the board determines appropriate in order to carry out this subsection and to ensure full disclosure and reporting by the employer and member in order to minimize fraud and abuse and prevent the filing of false or fraudulent claim or benefit applications.

(3)(a) A former member of the retirement system who has withdrawn his or her accumulated contributions under section 79-955 shall be reinstated to membership in the retirement system if such person again becomes a school employee.

(b) The date of such membership shall relate back to the beginning of his or her original membership in the retirement system only if such school employee has repaid all amounts required in accordance with subsection (4) of this section. Unless and until all such amounts are repaid, the school employee shall be considered a new member, effective as of the date he or she again becomes a school employee.

(4)(a) With respect to any person who is reinstated to membership in the retirement system pursuant to subdivision (3)(a) of this section prior to April 17, 2014, and who files a valid and complete one-time application with the retirement board for the restoration of part or all of his or her relinquished creditable service prior to six years after April 17, 2014, but prior to termination, the following shall apply:

(i) Such member shall pay to the retirement system an amount equal to the previously withdrawn contributions for the creditable service to be restored, plus an amount equal to the actuarial assumed rate of return on such amount to the date of repayment; and

(ii) Payment for restoration of such relinquished creditable service must be completed within six years of April 17, 2014, or prior to termination, whichever is earlier.

(b) With respect to any person who is reinstated to membership in the retirement system pursuant to subdivision (3)(a) of this section on and after April 17, 2014, and who files a valid and complete one-time application with the retirement board for the restoration of part or all of his or her relinquished creditable service within five years after the date of such member's reinstatement to membership in the retirement system but prior to termination, the following shall apply:

(i) Such member shall pay to the retirement system an amount equal to the previously withdrawn contributions for the creditable service to be restored, plus an amount equal to the actuarial assumed rate of return on such amount to the date of repayment; and

(ii) Payment for restoration of such relinquished creditable service must be completed within five years of the date of such member's reinstatement to membership in the retirement system or prior to termination, whichever is earlier.

(5) If less than full payment is made by the member, relinquished creditable service shall be restored in proportion to the amounts repaid. Repayment may be made through direct payment, installment payments, an irrevocable payroll deduction authorization, cash rollover contributions pursuant to section 79-933.02, or trustee-to-trustee transfers pursuant to section 79-933.09.

**Source:** Laws 1945, c. 219, § 14, p. 643; R.S.Supp., 1947, § 79-2914; Laws 1949, c. 256, § 448, p. 845; Laws 1969, c. 735, § 4, p. 2778; Laws 1986, LB 311, § 16; Laws 1986, LB 325, § 2; R.S.1943, (1994), § 79-1514; Laws 1996, LB 900, § 556; Laws 1996, LB 1076, § 16; Laws 1997, LB 623, § 16; Laws 1997, LB 624, § 18; Laws 1999,

LB 703, § 9; Laws 2001, LB 408, § 14; Laws 2004, LB 1097, § 24; Laws 2013, LB263, § 16; Laws 2014, LB1042, § 2; Laws 2017, LB415, § 26.

**79-923 Repealed. Laws 2017, LB415, § 55.**

**79-924 Repurchase relinquished creditable service; credit for prior years of service; payment; rules and regulations; election; provisions applicable.**

The retirement board may adopt and promulgate rules and regulations to allow for lump-sum or installment payments for school employees who elect to repurchase relinquished creditable service under section 79-921 or buy credit for prior years of service under sections 79-933.03 to 79-933.06 and 79-933.08. Any person who elects to repurchase relinquished creditable service or buy credit for prior years of service on an installment basis may be charged reasonable service costs, shall be credited with those prior years of service only as the money is actually received by the retirement system, and shall have paid to the retirement system all installments prior to the commencement of a retirement annuity.

**Source:** Laws 1986, LB 325, § 6; Laws 1990, LB 819, § 1; R.S.1943, (1994), § 79-1514.05; Laws 1996, LB 900, § 559; Laws 1996, LB 1076, § 18; Laws 1997, LB 724, § 4; Laws 2014, LB1042, § 3; Laws 2018, LB1005, § 24.  
Operative date July 19, 2018.

**79-926 Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.**

(1) Under such rules and regulations as the retirement board may adopt and promulgate, each person who was a school employee at any time prior to the establishment of the retirement system and who becomes a member of the retirement system shall, within two years after becoming a member, file a detailed statement of all service as a school employee rendered by him or her prior to the date of establishment of the retirement system. In order to qualify for prior service credit toward a service annuity, a school employee, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, must have completed four years of service on a part-time or full-time basis during the five calendar years immediately preceding July 1, 1945, or have completed eighteen years out of the last twenty-five years prior to July 1, 1945, full time or part time, and two years out of the five years immediately preceding July 1, 1945, full time or part time, or such school employee must complete, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, four years of service within the five calendar years immediately following July 1, 1945. In order to qualify for prior service credit toward a service annuity, a school employee who becomes a member of the retirement system on or before September 30, 1951, or from July 1, 1945, to the date of becoming a member shall have been continuously employed in a public school in Nebraska operating under any other regularly established retirement or pension system.

(2)(a) Any school employee who is reemployed pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of his

or her period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan.

(b) The employer shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the employer shall pay to the retirement system an amount equal to:

(i) The sum of the member and employer contributions that would have been paid during such period of military service; and

(ii) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, or interest credits that would have accrued on the member and employer contributions that are paid by the employer pursuant to this section shall not be included.

(c) The amount required in subdivision (b) of this subsection shall be paid to the retirement system as soon as reasonably practicable following the date of reemployment, but must be paid within eighteen months of the date the board notifies the employer of the amount due. If the employer fails to pay the required amount within such eighteen-month period, then the employer is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the employer is notified by the board until the date the amount is paid.

(d) The retirement board may adopt and promulgate rules and regulations to carry out this subsection, including, but not limited to, rules and regulations on:

(i) How and when the member and employer must notify the retirement system of a period of military service;

(ii) The acceptable methods of payment;

(iii) Determining the service and compensation upon which the contributions must be made;

(iv) Accelerating the payment from the employer due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the member's termination or retirement or the employer's reorganization, consolidation, merger, or closing; and

(v) The documentation required to substantiate that the member was reemployed pursuant to 38 U.S.C. 4301 et seq.

(3) This section only applies to military service that falls within the definition of uniformed service under 38 U.S.C. 4301 et seq. Military service does not include service provided pursuant to sections 55-101 to 55-181.

**Source:** Laws 1945, c. 219, § 15, p. 643; R.S.Supp., 1947, § 79-2915; Laws 1949, c. 256, § 449, p. 845; Laws 1951, c. 291, § 2, p. 965; Laws 1953, c. 316, § 1, p. 1048; Laws 1975, LB 236, § 1; Laws 1992, LB 1001, § 33; Laws 1996, LB 847, § 30; R.S.1943, (1994), § 79-1515; Laws 1996, LB 900, § 561; Laws 1998, LB 1191, § 50; Laws 2011, LB509, § 23; Laws 2017, LB415, § 27; Laws 2018, LB1005, § 25.

Operative date July 19, 2018.

### **79-931 Retirement; when; application.**



(1) A member hired prior to July 1, 2016, upon filing a retirement application with the retirement system, may retire (a) at any age if the member has completed thirty-five years of creditable service, (b) if the member has completed at least five years of creditable service plus eligibility and vesting credit and is at least sixty years of age, (c) if the member is at least sixty-five years of age upon termination, or (d) if the member is at least fifty-five years of age, has acquired the equivalent of one-half year of service as a public school employee under the retirement system following July 1, 1997, was a school employee on or after March 4, 1998, and the sum of the member's attained age and creditable service totals eighty-five.

(2) A member hired on or after July 1, 2016, and prior to July 1, 2018, or a member who has taken a retirement or refund that relinquished all prior service credit and who has not repaid the full amount of the refund pursuant to section 79-921 and is rehired or hired by any employer covered by the retirement system on or after July 1, 2016, and prior to July 1, 2018, upon filing a retirement application with the retirement system, may retire (a) at any age if the member has completed thirty-five years of creditable service, (b) if the member is at least fifty-five years of age and the sum of the member's attained age and creditable service totals eighty-five, or (c) if the member is at least sixty years of age and has completed at least five years of creditable service including eligibility and vesting credit.

(3) A member hired on or after July 1, 2018, or a member or former member who has taken a retirement or refund that relinquished all prior service credit and who has not repaid the full amount of the refund pursuant to section 79-921 and is rehired or hired by any employer covered by the retirement system on or after July 1, 2018, upon filing a retirement application with the retirement system, may retire (a) if the member is at least sixty years of age and the sum of the member's attained age and creditable service totals eighty-five or (b) if the member is at least sixty years of age and has completed at least five years of creditable service including eligibility and vesting credit.

**Source:** Laws 1945, c. 219, § 21, p. 645; R.S.Supp., 1947, § 79-2921; Laws 1949, c. 256, § 454, p. 847; Laws 1987, LB 549, § 5; Laws 1989, LB 506, § 10; R.S.1943, (1994), § 79-1520; Laws 1996, LB 900, § 566; Laws 1996, LB 1076, § 19; Laws 1998, LB 822, § 1; Laws 2016, LB447, § 9; Laws 2017, LB415, § 28.

**79-933.01 Direct rollover; terms, defined; distributee; powers; board; powers.**

(1) For purposes of this section and section 79-933.02:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 79-933.02, an individual retirement plan de-

scribed in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 31; Laws 2002, LB 407, § 28; Laws 2012, LB916, § 21; Laws 2018, LB1005, § 26.  
Operative date July 19, 2018.

### **79-933.02 Retirement system; accept payments and rollovers; limitations; board; powers.**

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08 if the contributions do not exceed the amount of payment required for the relinquished creditable service repurchased or service credits purchased by the member pursuant to such sections and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified

total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for purchase of service credits or repurchase of relinquished creditable service pursuant to section 79-921.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 32; Laws 1997, LB 623, § 17; Laws 1997, LB 724, § 5; Laws 2002, LB 407, § 29; Laws 2014, LB1042, § 4; Laws 2018, LB1005, § 27.  
Operative date July 19, 2018.

**79-933.03 Contributing member; credit for service in other schools; limitation; procedure; payment.**

(1) Under such rules and regulations as the board may adopt and promulgate, a contributing member under contract or employed on July 19, 1996, may receive credit for not to exceed ten years of creditable teaching service rendered in public schools in another state or schools in this state covered by a school retirement system established pursuant to section 79-979, if such member files an application for service credit within three years of membership or reinstatement in the School Employees Retirement System of the State of Nebraska and makes payment into the retirement system of an amount equal to the required deposits he or she would have paid had he or she been employed in this state by a school covered by the retirement system, plus the interest which would have accrued on such amount. Payment must be completed within five years of membership or reinstatement in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered

by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made pursuant to subsection (1) of this section to the extent that the member does not receive credit for such service.

(3) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

**Source:** Laws 1996, LB 1076, § 22; Laws 1997, LB 623, § 18; Laws 1998, LB 1191, § 51; Laws 1999, LB 703, § 10; Laws 2011, LB509, § 24; Laws 2018, LB1005, § 28.  
Operative date July 19, 2018.

**79-933.04 Contributing member; credit for leave of absence; limitation; procedure; payment.**

(1) For contributing members under contract or employed on July 19, 1996, and under such rules and regulations as the board may adopt and promulgate, any member who was away from his or her position while on a leave of absence from such position authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for such time as he or she was on such leave of absence. Such credit shall increase the benefits provided by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on compensation at the level received immediately prior to the leave of absence. Such credit shall be allowed if such member has paid into the retirement system an amount equal to the sum of the deductions from his or her compensation and any contribution which the school district would have been required to make had he or she continued to receive compensation at the level received immediately prior to the leave of absence with such deposits plus interest which would have accrued on such deposits to be paid as the retirement board may direct within five years of his or her return to membership in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) Leave of absence shall be construed to include, but is not limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence the member must return to employment with a school district, other than a Class V school district, in the state within one year after termination of the leave of absence and must apply

for such credit within three years of the return to membership in the retirement system.

**Source:** Laws 1996, LB 1076, § 23; Laws 1997, LB 623, § 19; Laws 1999, LB 703, § 11; Laws 2018, LB1005, § 29.

Operative date July 19, 2018.

**79-933.07 Purchase of service credit or repurchase of relinquished creditable service; rules and regulations.**

The board may adopt and promulgate rules and regulations for the purchase of service credit or the repurchase of relinquished creditable service, which shall include, but not be limited to, the method for determining actuarial cost and interest requirements for payments other than one lump-sum payment.

**Source:** Laws 1996, LB 1076, § 26; Laws 2014, LB1042, § 5; Laws 2018, LB1005, § 30.

Operative date July 19, 2018.

**79-933.08 Purchase of service credit within twelve months of retirement; agreement authorized.**

(1) A school employee who became a member before July 1, 2014, and who has completed at least five years of creditable service plus eligibility and vesting credit or a school employee who became a member for the first time on or after July 1, 2014, and who has completed ten or more years of creditable service may purchase service credit for up to five years of creditable service. Such purchase may be executed up to twelve months prior to the employee's retirement date. Such service credits shall be purchased by the employee for an amount equal to the actuarial cost to the retirement system for allowing such additional service credit to the employee.

(2) Payment for such service credits shall be completed prior to the employee's termination of employment date and may be made through direct payment, installment payments, or an irrevocable deduction authorization. If payments are made on an installment basis, interest shall be charged at the rate of regular interest.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

(4) The retirement board shall credit funds collected pursuant to this section to the Contingent Account pending the employee's retirement. If the employee does not retire within twelve months after the execution of the purchase made pursuant to this section, such funds shall be refunded, excluding interest earned, and the employee shall not be given credit for the service credit attempted to be purchased.

**Source:** Laws 1997, LB 724, § 1; Laws 1999, LB 703, § 14; Laws 2014, LB1042, § 6; Laws 2017, LB415, § 29.

**79-934 Formula annuity retirement allowance; eligibility; formula; payment.**

(1) In lieu of the school retirement allowance provided by section 79-933, any member who is not an employee of a Class V school district and who becomes eligible to make application for and receive a school retirement allowance under section 79-931 may receive a formula annuity retirement allowance if it is greater than the school retirement allowance provided by section 79-933.

(2) Subject to the other provisions of this section, the monthly formula annuity in the normal form shall be determined by multiplying the number of years of creditable service for which such member would otherwise receive the service annuity provided by section 79-933 by (a) one and one-quarter percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following August 24, 1975, (b) one and one-half percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 17, 1982, (c) one and sixty-five hundredths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1984, (d) one and seventy-three hundredths percent of his or her final average compensation for a member actively employed as a school employee under the retirement system or under contract with an employer on or after June 5, 1993, (e) one and eight-tenths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1995, and was employed as a school employee under the retirement system or under contract with an employer on or after April 10, 1996, (f) one and nine-tenths percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1998, and was employed as a school employee under the retirement system or under contract with an employer on or after April 29, 1999, (g) two percent of his or her final average compensation for a member who has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 2000, who was employed as a school employee under the retirement system or under contract with an employer on or after May 2, 2001, and hired prior to July 1, 2016, and who has not retired prior to May 2, 2001, or (h) two percent of his or her final average compensation for a member initially hired on or after July 1, 2016, or a member who has taken a refund or retirement and is rehired or hired by a separate employer covered by the retirement system on or after July 1, 2016, and has acquired the equivalent of five years of service or more as a school employee under the retirement system or under contract with an employer on or after July 1, 2016. Subdivision (2)(f) of this section shall not apply to a member who is retired prior to April 29, 1999. Subdivision (2)(g) of this section shall not apply to a member who is retired prior to May 2, 2001.

(3) If the annuity begins on or after the member's sixty-fifth birthday, the annuity shall not be reduced.

(4) If the annuity begins prior to the member's sixtieth birthday and the member has completed thirty-five or more years of creditable service, the annuity shall be actuarially reduced on the basis of age sixty-five.

(5)(a) For a member who has acquired the equivalent of one-half year of creditable service or more as a school employee under the retirement system following July 1, 1997, and who was a school employee on or after March 4, 1998, and who was hired prior to July 1, 2016, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least fifty-five years of age, the annuity shall not be

reduced. This subdivision shall not apply to a member who is retired prior to March 4, 1998.

(b) For a member hired on or after July 1, 2016, and prior to July 1, 2018, or for a member who has taken a retirement or refund that relinquished all prior service credit and who has not repaid the full amount of the refund pursuant to section 79-921 and is rehired or hired by any employer covered by the retirement system on or after July 1, 2016, and prior to July 1, 2018, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least fifty-five years of age, the annuity shall not be reduced.

(c) For a member hired on or after July 1, 2018, or for a member or former member who has taken a retirement or refund that relinquished all prior service credit and who has not repaid the full amount of the refund pursuant to section 79-921 and is rehired or hired by any employer covered by the retirement system on or after July 1, 2018, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least sixty years of age, the annuity shall not be reduced.

(6) If the annuity begins on or after the member's sixtieth birthday and the member has completed at least a total of five years of creditable service including eligibility and vesting credit but has not yet qualified for an unreduced annuity as specified in this section, the annuity shall be reduced by three percent for each year after the member's sixtieth birthday and prior to his or her sixty-fifth birthday.

(7) Except as provided in section 42-1107, the normal form of the formula annuity shall be an annuity payable monthly during the remainder of the member's life with the provision that in the event of his or her death before sixty monthly payments have been made the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made. Except as provided in section 42-1107, a member may elect to receive in lieu of the normal form of annuity an actuarially equivalent annuity in any optional form provided by section 79-938.

(8) All formula annuities shall be paid from the School Retirement Fund.

(9)(a)(i) For purposes of this section, in the determination of compensation for members on or after July 1, 2005, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than seven percent of the compensation base during the sixty months preceding the member's retirement shall be excluded unless (A) the member experienced a substantial change in employment position, (B) as verified by the school board, the excess compensation above seven percent occurred as the result of a collective-bargaining agreement between the employer and a recognized collective-bargaining unit or category of school employee, and the percentage increase in compensation above seven percent shall not be excluded for employees outside of a collective-bargaining unit or within the same category of school employee, or (C) the excess compensation occurred as the result of a districtwide permanent benefit change made by the employer for a category of school employee in accordance with subdivision (4)(a)(iv) of section 79-902.

(ii) For purposes of subdivision (9)(a) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both;

(B) Compensation base means (I) for current members, employed with the same employer, the member's compensation for the plan year ending June 30, 2005, or (II) for members newly hired or hired by a separate employer on or after July 1, 2005, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of seven percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year; and

(C) Recognized collective-bargaining unit means a group of employees similarly situated with a similar community of interest appropriate for bargaining recognized as such by a school board.

(b)(i) In the determination of compensation for members whose retirement date is on or after July 1, 2012, through June 30, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than nine percent of the compensation base shall be excluded.

(ii) For purposes of subdivision (9)(b) of this section, compensation base means (A) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2012, or (B) for members newly hired or hired by a separate employer on or after July 1, 2012, the member's compensation for the first full plan year following the member's date of hiring.

(c)(i) In the determination of compensation for members whose retirement date is on or after July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation for the preceding plan year by more than eight percent during the capping period shall be excluded. Such member's compensation for the first plan year of the capping period shall be compared to the member's compensation received for the plan year immediately preceding the capping period.

(ii) For purposes of subdivision (9)(c) of this section:

(A) Capping period means the five plan years preceding the later of (I) such member's retirement date or (II) such member's final compensation date; and

(B) Final compensation date means the later of (I) the date on which a retiring member's final compensation is actually paid or (II) if a retiring member's final compensation is paid in advance as a lump sum, the date on which such final compensation would have been paid to the member in the absence of such advance payment.

**Source:** Laws 1967, c. 546, § 7, p. 1804; Laws 1969, c. 736, § 1, p. 2785; Laws 1975, LB 50, § 2; Laws 1981, LB 248, § 2; Laws 1982, LB 609, § 1; Laws 1984, LB 457, § 2; Laws 1986, LB 546, § 2; Laws 1986, LB 325, § 7; Laws 1987, LB 549, § 8; Laws 1988, LB 160, § 1; Laws 1988, LB 1170, § 3; Laws 1991, LB 549, § 36; Laws 1993, LB 292, § 2; Laws 1996, LB 700, § 9; R.S.1943, (1994), § 79-1522.01; Laws 1996, LB 900, § 569; Laws 1996, LB 1050, § 7; Laws 1996, LB 1076, § 21; Laws 1996, LB 1273, § 24; Laws 1998, LB 822, § 2; Laws 1999, LB 674, § 4; Laws 2001, LB 711,



§ 2; Laws 2002, LB 407, § 32; Laws 2015, LB446, § 3; Laws 2016, LB447, § 10; Laws 2016, LB790, § 6; Laws 2017, LB415, § 30.

**79-935 Retirement; increase in benefits; when applicable.**

No provision of section 79-916, 79-934, 79-958, 79-960, or 79-966 which would result in an increase in benefits that would have been payable prior to July 1, 1984, shall apply to any person until that person has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1984.

No provision of section 79-934, 79-957, 79-958, or 79-960 which would result in an increase in benefits that would have been payable prior to July 1, 1986, shall apply to any person until that person has acquired the equivalent of one-half year of service or more as a school employee under the retirement system following July 1, 1986.

No provision of section 79-934, 79-957, 79-958, or 79-960 which would result in an increase in benefits that would have been payable prior to April 1, 1988, shall apply to any person unless he or she is employed on such date and has acquired five hundred sixteen or more hours as a school employee under the retirement system during or after fiscal year 1987-88.

No provision of section 79-916, 79-934, 79-957, 79-958, 79-960, or 79-966 which would result in an increase in benefits that would have been payable prior to July 1, 2016, shall apply to any person until that person has acquired the equivalent of five years of service or more as a school employee under the retirement system following July 1, 2016.

**Source:** Laws 1984, LB 457, § 7; Laws 1986, LB 325, § 8; Laws 1988, LB 160, § 2; R.S.1943, (1994), § 79-1522.02; Laws 1996, LB 900, § 570; Laws 2016, LB447, § 11.

**79-948 Retirement benefits; exemption from taxation and legal process; exception.**

The right of a person to an annuity, an allowance, or any optional benefit under the School Employees Retirement Act, any other right accrued or accruing to any person or persons under such act, the various funds and account created thereby, and all the money, investments, and income thereof shall be exempt from any state, county, municipal, or other local tax, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall not be assignable except to the extent that such annuity, allowance, or benefit is subject to a qualified domestic relations order under the Spousal Pension Rights Act.

**Source:** Laws 1945, c. 219, § 53, p. 655; R.S.Supp.,1947, § 79-2953; Laws 1949, c. 256, § 486, p. 857; Laws 1969, c. 735, § 15, p. 2783; Laws 1971, LB 987, § 30; Laws 1986, LB 311, § 20; Laws 1988, LB 1170, § 19; Laws 1989, LB 506, § 11; Laws 1991, LB 549, § 44; R.S.1943, (1994), § 79-1552; Laws 1996, LB 900, § 583; Laws 1996, LB 1273, § 26; Laws 2002, LB 407, § 34; Laws 2012, LB916, § 22; Laws 2015, LB40, § 10.

Spousal Pension Rights Act, see section 42-1101.

**79-951 Retirement; disability; conditions; application; medical examination; waiver.**

(1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member should be retired because he or she suffers from an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

**Source:** Laws 1945, c. 219, § 24, p. 646; R.S.Supp.,1947, § 79-2924; Laws 1949, c. 256, § 457, p. 848; Laws 1963, c. 495, § 3, p. 1584; Laws 1975, LB 50, § 3; Laws 1987, LB 549, § 9; Laws 1991, LB 549, § 37; R.S.1943, (1994), § 79-1523; Laws 1996, LB 900, § 586; Laws 1996, LB 1076, § 27; Laws 1997, LB 623, § 25; Laws 1998, LB 1191, § 55; Laws 1999, LB 538, § 2; Laws 2000, LB 1192, § 15; Laws 2004, LB 1097, § 28; Laws 2010, LB950, § 16; Laws 2017, LB415, § 31.

**79-954 Retirement; disability beneficiary; restoration to active service; effect.**

If a disability beneficiary under the age of sixty-five years is restored to active service as a school employee or if the examining physician certifies that the person is no longer disabled for service as a school employee, the disability retirement allowance shall cease. If the beneficiary again becomes a school employee, he or she shall become a member of the retirement system. Any prior service certificate, on the basis of which his or her creditable service was computed at the time of his or her retirement for disability, shall be restored to full force and effect upon his or her again becoming a member of such retirement system.

**Source:** Laws 1945, c. 219, § 27, p. 647; R.S.Supp.,1947, § 79-2927; Laws 1949, c. 256, § 460, p. 849; R.S.1943, (1994), § 79-1526; Laws 1996, LB 900, § 589; Laws 2009, LB449, § 1; Laws 2013, LB553, § 7; Laws 2016, LB447, § 12; Laws 2017, LB415, § 32.

**79-958 Employee; employer; required deposits and contributions.**

(1) Beginning on September 1, 2012, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund nine and seventy-eight hundredths percent of compensation. Such deposits shall be transmitted at the same time and in the same manner as required employer contributions.

(2) For the purpose of providing the funds to pay for formula annuities, every employer shall be required to deposit in the School Retirement Fund one hundred one percent of the required contributions of the school employees of each employer. Such deposits shall be transmitted to the retirement board at the same time and in the same manner as such required employee contributions.

(3) The employer shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the employer in lieu of member contributions. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921 and 79-933.03 to 79-933.06, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

**Source:** Laws 1945, c. 219, § 32, p. 649; R.S.Supp.,1947, § 79-2932; Laws 1949, c. 256, § 465, p. 851; Laws 1951, c. 291, § 6, p. 968; Laws 1959, c. 414, § 2, p. 1388; Laws 1967, c. 546, § 9, p. 1806; Laws 1971, LB 987, § 24; Laws 1984, LB 457, § 3; Laws 1985, LB 353, § 3; Laws 1986, LB 325, § 11; Laws 1988, LB 160, § 4; Laws 1988, LB 1170, § 6; Laws 1991, LB 549, § 39; Laws 1994, LB 833, § 33; Laws 1995, LB 574, § 80; Laws 1996, LB 700, § 10; R.S.Supp.,1995, § 79-1531; Laws 1996, LB 900, § 593; Laws 1997, LB 623, § 27; Laws 1998, LB 1191, § 57; Laws 2001, LB 408, § 17; Laws 2002, LB 407, § 35; Laws 2005, LB 503, § 10; Laws 2007, LB596, § 2; Laws 2009, LB187, § 1; Laws 2011, LB382, § 1; Laws 2013, LB263, § 19; Laws 2013, LB553, § 8; Laws 2017, LB415, § 33.

**79-966 School Retirement Fund; state deposits; amount; determination; contingent state deposit; how calculated; hearing.**

(1)(a) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall annually, on or before July 1, determine the state deposit

to be made by the state in the School Retirement Fund for that fiscal year. The amount of such state deposit shall be determined pursuant to section 79-966.01. The retirement board shall thereupon certify the amount of such state deposit, and on the warrant of the Director of Administrative Services, the State Treasurer shall, as of July 1 of such year, transfer from funds appropriated by the state for that purpose to the School Retirement Fund the amount of such state deposit.

(b) Beginning July 1, 2016, the contingent state deposit described in this subsection shall be calculated as a percent of compensation of all members of the retirement system. For any year in which a deposit is made to the School Retirement Fund under this subsection, if the actuary for a retirement system provided for under the Class V School Employees Retirement Act determines that the actuarially required contribution rate, for the fiscal year of the retirement system that begins before the state deposit, exceeds the rate of all contributions required pursuant to the Class V School Employees Retirement Act, using the thirty-year amortization period specified in section 79-966.01, the Class V district school board may request a public hearing of the Appropriations Committee of the Legislature to ask the state to transfer to the funds of the retirement system provided for under the Class V School Employees Retirement Act an amount determined by multiplying the compensation of all members of such retirement system by the lesser of the percent of compensation deposited into the School Retirement Fund under this subsection or the percent of compensation of the members of the retirement system provided for under the Class V School Employees Retirement Act needed to meet the actuarially required contribution rate for such system, using the thirty-year amortization period specified in section 79-966.01. Any additional amount of transfer so calculated, recommended by the Appropriations Committee of the Legislature and approved by the Legislature, shall be added to the two percent specified in subsection (2) of this section for the amount required by subsection (2) of section 79-916 to be transferred to the funds of the retirement system provided for under the Class V School Employees Retirement Act.

(2) For each fiscal year beginning July 1, 2014, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to two percent of the compensation of all members of the retirement system.

(3) In addition to the state deposits required by subsections (1) and (2) of this section, beginning on July 1, 2005, and each fiscal year thereafter for employees who become members prior to July 1, 2016, the state shall deposit in the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity benefit established pursuant to sections 79-933 and 79-952 as accrued through the end of the previous fiscal year of the school employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act.

**Source:** Laws 1945, c. 219, § 41, p. 651; R.S.Supp.,1947, § 79-2941; Laws 1949, c. 256, § 474, p. 853; Laws 1965, c. 530, § 4, p. 1668; Laws 1969, c. 735, § 12, p. 2782; Laws 1971, LB 987, § 25; Laws 1981, LB 248, § 3; Laws 1984, LB 457, § 5; Laws 1988, LB 1170, § 10; R.S.1943, (1994), § 79-1540; Laws 1996, LB 900, § 601; Laws

2002, LB 407, § 39; Laws 2004, LB 1097, § 29; Laws 2009, LB187, § 2; Laws 2011, LB382, § 2; Laws 2013, LB553, § 9; Laws 2016, LB447, § 13.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS**

**79-978 Terms, defined.**

For purposes of the Class V School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions means the sum of amounts contributed by a member of the system together with regular interest credited thereon;

(2) Actuarial equivalent means the equality in value of the retirement allowance for early retirement or the retirement allowance for an optional form of annuity, or both, with the normal form of the annuity to be paid, as determined by the application of the appropriate actuarial table, except that use of such actuarial tables shall not effect a reduction in benefits accrued prior to September 1, 1985, as determined by the actuarial tables in use prior to such date;

(3) Actuarial tables means:

(a) For determining the actuarial equivalent of any annuities other than joint and survivorship annuities:

(i) For members hired before July 1, 2018, a unisex mortality table using twenty-five percent of the male mortality and seventy-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually; and

(ii) For members hired on or after July 1, 2018, or rehired on or after July 1, 2018, after termination of employment and being paid a retirement benefit, the determinations shall be based on a unisex mortality table and an interest rate specified by the board of trustees. Both the mortality table and the interest rate shall be recommended by the actuary retained by the board of trustees and approved by the board of trustees following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table, interest rate, and actuarial factors in effect on the member's retirement date shall be used to calculate the actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate; and

(b) For joint and survivorship annuities:

(i) For members hired before July 1, 2018, a unisex retiree mortality table using sixty-five percent of the male mortality and thirty-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually and a unisex joint annuitant mortality table using thirty-five percent of the male mortality and sixty-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually; and

(ii) For members hired on or after July 1, 2018, or rehired on or after July 1, 2018, after termination of employment and being paid a retirement benefit, the determinations shall be based on a unisex mortality table and an interest rate specified by the board of trustees. Both the mortality table and the interest rate

shall be recommended by the actuary retained by the board of trustees and approved by the board of trustees following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table, interest rate, and actuarial factors in effect on the member's retirement date shall be used to calculate the actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate;

(4) Annuitant means any member receiving an allowance;

(5) Annuity means annual payments, for both prior service and membership service, for life as provided in the Class V School Employees Retirement Act;

(6) Audit year means the period beginning January 1 in any year and ending on December 31 of that same year except for the initial audit year which will begin September 1, 2016, and end on December 31, 2016. Beginning September 1, 2016, the audit year will be the period of time used in the preparation of the annual actuarial analysis and valuation and a financial audit of the investments of the retirement system;

(7) Beneficiary means any person entitled to receive or receiving a benefit by reason of the death of a member;

(8) Board of education means the board of education of the school district;

(9)(a) Compensation means gross wages or salaries payable to the member during a fiscal year and includes (i) overtime pay, (ii) member contributions to the retirement system that are picked up under section 414(h) of the Internal Revenue Code, as defined in section 49-801.01, (iii) retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, and (iv) amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code, as defined in section 49-801.01, or any other section of the code which defers or excludes such amounts from income.

(b) Compensation does not include (i) fraudulently obtained amounts as determined by the board, (ii) amounts for accrued unused sick leave or accrued unused vacation leave converted to cash payments, (iii) insurance premiums converted into cash payments, (iv) reimbursement for expenses incurred, (v) fringe benefits, (vi) per diems paid as expenses, (vii) bonuses for services not actually rendered, (viii) early retirement inducements, (ix) cash awards, (x) severance pay, or (xi) employer contributions made for the purposes of separation payments made at retirement and early retirement inducements.

(c) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code, as defined in section 49-801.01, shall be disregarded;

(10) Council means the Nebraska Investment Council created and acting pursuant to section 72-1237;

(11) Creditable service means the sum of the membership service and the prior service, measured in one-tenth-year increments;

(12) Early retirement date means, for members hired prior to July 1, 2016, who have attained age fifty-five, that month and year selected by a member having at least ten years of creditable service which includes a minimum of five years of membership service. Early retirement date means, for members hired on or after July 1, 2016, that month and year selected by a member having at least five years of creditable service and who has attained age sixty;

(13) Early retirement inducement means, but is not limited to:

(a) A benefit, bonus, or payment to a member in exchange for an agreement by the member to retire with a reduced retirement benefit;

(b) A benefit, bonus, or payment paid to a member in addition to the member's retirement benefit;

(c) Lump-sum or installment cash payments, except payments for accrued unused leave converted to cash payments;

(d) An additional salary or wage component of any kind that is being paid as an incentive to leave employment and not for personal services performed for which creditable service is granted;

(e) Partial or full employer payment of a member's health, dental, life, or long-term disability insurance benefits or cash in lieu of such insurance benefits that extend beyond the member's termination of employment and contract of employment dates. This subdivision does not apply to any period during which the member is contributing to the retirement system and being awarded creditable service; and

(f) Any other form of separation payments made by an employer to a member at termination, including, but not limited to, purchasing retirement contracts for the member pursuant to section 79-514, or depositing money for the member in an account established under section 403(b) of the Internal Revenue Code except for payments for accrued unused leave;

(14) Employee means the following enumerated persons receiving compensation from the school district: (a) Regular teachers and administrators employed on a written contract basis; and (b) regular employees, not included in subdivision (14)(a) of this section, hired upon a full-time basis, which basis shall contemplate a workweek of not less than thirty hours;

(15) Employer means a school district participating in a retirement system established pursuant to the Class V School Employees Retirement Act;

(16) Fiscal year means the period beginning September 1 in any year and ending on August 31 of the next succeeding year;

(17) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(18) Interest means, for the purchase of service credit, the purchase of prior service credit, restored refunds, and delayed payments, the investment return assumption used in the most recent actuarial valuation;

(19) Member means any employee included in the membership of the retirement system or any former employee who has made contributions to the system and has not received a refund;

(20) Membership service means service on or after September 1, 1951, as an employee of the school district and a member of the system for which compensation is paid by the school district. Credit for more than one year of membership service shall not be allowed for service rendered in any fiscal year. Beginning September 1, 2005, a member shall be credited with a year of membership service for each fiscal year in which the member performs one thousand or more hours of compensated service as an employee of the school district. For an employee who becomes a member prior to July 1, 2018, an hour of compensated service shall include any hour for which the member is compensated by the school district during periods when no service is performed due to vacation or approved leave. For an employee who becomes a member on or after July 1, 2018, an hour of compensated service shall include

any hour for which the member is compensated by the school district during periods when no service is performed due to used accrued sick days, used accrued vacation days, federal and state holidays, and jury duty leave for which the member is paid full compensation by the employer. If a member performs less than one thousand hours of compensated service during a fiscal year, one-tenth of a year of membership service shall be credited for each one hundred hours of compensated service by the member in such fiscal year. In determining a member's total membership service, all periods of membership service, including fractional years of membership service in one-tenth-year increments, shall be aggregated;

(21) Military service means service in the uniformed services as defined in 38 U.S.C. 4301 et seq., as such provision existed on March 27, 1997;

(22) Normal retirement date means the end of the month during which the member attains age sixty-five and has completed at least five years of membership service;

(23) Primary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of a member;

(24) Prior service means service rendered prior to September 1, 1951, for which credit is allowed under section 79-999, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-990, 79-991, 79-994, 79-995, and 79-997;

(25) Regular interest means interest (a) on the total contributions of the member prior to the close of the last preceding fiscal year, (b) compounded annually, and (c)(i) beginning September 1, 2016, at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on September 1 of each year and (ii) prior to September 1, 2016, at rates to be determined annually by the board, which shall have the sole, absolute, and final discretionary authority to make such determination, except that the rate for any given year in no event shall exceed the actual percentage of net earnings of the system during the last preceding fiscal year;

(26) Retirement allowance means the total annual retirement benefit payable to a member for service or disability;

(27) Retirement date means the date of retirement of a member for service or disability as fixed by the board of trustees described in section 79-980;

(28) Retirement system or system means the School Employees' Retirement System of (corporate name of the school district as described in section 79-405) as provided for by the act;

(29) Secondary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of all primary beneficiaries prior to the death of the member. If no primary beneficiary survives the member, secondary beneficiaries shall be treated in the same manner as primary beneficiaries;

(30) Solvency means the rate of all contributions required pursuant to the Class V School Employees Retirement Act is equal to or greater than the actuarially required contribution rate as annotated in the most recent valuation report prepared by the actuary retained by the board of trustees as provided in section 79-984;



(31) State investment officer means the state investment officer appointed pursuant to section 72-1240 and acting pursuant to the Nebraska State Funds Investment Act;

(32) Substitute employee means a person hired by an employer as a temporary employee to assume the duties of an employee due to a temporary absence of any employee. Substitute employee does not mean a person hired as an employee on an ongoing basis to assume the duties of other employees who are temporarily absent;

(33) Temporary employee means a person hired by an employer who is not an employee and who is hired to provide service for a limited period of time to accomplish a specific purpose or task. When such specific purpose or task is complete, the employment of such temporary employee shall terminate and in no case shall the temporary employment period exceed one year in duration;

(34) Trustee means a trustee provided for in section 79-980; and

(35) Voluntary service or volunteer means providing bona fide unpaid service to an employer.

**Source:** Laws 1951, c. 274, § 1, p. 910; Laws 1953, c. 308, § 1, p. 1025; Laws 1967, c. 544, § 1, p. 1786; Laws 1976, LB 994, § 1; Laws 1982, LB 131, § 1; Laws 1985, LB 215, § 1; Laws 1987, LB 298, § 5; Laws 1988, LB 1142, § 9; Laws 1988, LB 551, § 2; Laws 1989, LB 237, § 1; Laws 1991, LB 350, § 1; Laws 1992, LB 1001, § 20; Laws 1993, LB 107, § 1; Laws 1995, LB 505, § 1; R.S.Supp.,1995, § 79-1032; Laws 1996, LB 900, § 613; Laws 1997, LB 347, § 28; Laws 1997, LB 623, § 28; Laws 1998, LB 497, § 6; Laws 2000, LB 155, § 1; Laws 2005, LB 364, § 11; Laws 2010, LB950, § 17; Laws 2015, LB446, § 4; Laws 2016, LB447, § 14; Laws 2016, LB790, § 7; Laws 2017, LB415, § 34; Laws 2018, LB1005, § 31.

Operative date April 24, 2018.

#### Cross References

For supplemental retirement benefits, see sections 79-941 to 79-947.

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

#### **79-978.01 Act, how cited.**

Sections 79-978 to 79-9,118 shall be known and may be cited as the Class V School Employees Retirement Act.

**Source:** Laws 1998, LB 497, § 7; Laws 2011, LB509, § 33; Laws 2016, LB447, § 15; Laws 2017, LB415, § 35.

#### **79-979 Class V school district; employees' retirement system; established.**

(1) Prior to September 13, 1997, in each Class V school district in the State of Nebraska there is hereby established a separate retirement system for all regular employees of such school district. Such system shall be for the purpose of providing retirement benefits for all regular employees of the school district as provided in the Class V School Employees Retirement Act. The system shall be known as School Employees' Retirement System of (corporate name of the school district as described in section 79-405). All of its business shall be transacted, all of its funds shall be invested, and all of its cash and securities and other property shall be held in trust on behalf of the retirement system for

the purposes set forth in the act. Such funds shall be kept separate from all other funds of the school district and shall be used for no other purpose.

(2) Except as provided in subsection (3) of this section, if any new Class V school districts are formed after September 13, 1997, such new Class V school district shall elect to become or remain a part of the retirement system established pursuant to the School Employees Retirement Act.

(3) Any new Class V school districts formed pursuant to the Learning Community Reorganization Act shall continue to participate in the retirement system established pursuant to the Class V School Employees Retirement Act if such new Class V school district was formed at least in part by territory that had been in a Class V school district that participated in the retirement system established pursuant to the Class V School Employees Retirement Act.

**Source:** Laws 1951, c. 274, § 2, p. 912; Laws 1988, LB 1142, § 10; R.S.1943, (1994), § 79-1033; Laws 1996, LB 900, § 614; Laws 1997, LB 623, § 29; Laws 1997, LB 624, § 22; Laws 1998, LB 497, § 8; Laws 2006, LB 1024, § 60; Laws 2016, LB447, § 16.

#### Cross References

Learning Community Reorganization Act, see section 79-4,117.

School Employees Retirement Act, see section 79-901.

### **79-980 Employees retirement system; administration; board of trustees; members; terms; vacancy; expenses; liability.**

(1) At any time that the retirement system consists of only one Class V school district, the general administration of the retirement system is hereby vested in the board of trustees. Beginning July 1, 2016, the board of trustees shall consist of the following individuals: (a) Two members of the retirement system who are certificated staff elected by the members of the retirement system who are certificated staff; (b) one member of the retirement system who is classified staff elected by the members of the retirement system who are classified staff; (c) one member of the retirement system who is an annuitant elected by the members of the retirement system who are annuitants; (d) the superintendent of schools or his or her designee to serve as a voting, ex officio trustee; and (e) two business persons approved by the board of education qualified in financial affairs who are not members of the retirement system. The business person trustees shall be recommended to four-year terms by the trustees who are not business persons, and the appointments shall be approved by the board of education. The elections of the trustees who are members of the retirement system shall be arranged for, managed, and conducted by the board of trustees and, after the initial terms as otherwise designated, shall be for terms of four years. One certificated staff trustee serving on July 1, 2016, will continue serving until an elected certificated staff trustee will take position effective July 1, 2017; the second certificated staff trustee serving on July 1, 2016, will continue serving until a second elected certificated staff trustee will take position July 1, 2018; the classified staff trustee serving on July 1, 2016, will continue serving until an elected classified staff trustee will take position July 1, 2019; the annuitant member trustee serving on July 1, 2016, will continue serving until an elected annuitant member trustee will take position July 1, 2020; one business member trustee serving on July 1, 2016, will continue serving until a new term of office begins effective July 1, 2018; and the second business member trustee serving on July 1, 2016, will continue serving until a

new term of office begins effective July 1, 2020. The terms of the elected trustees shall be fixed so that one member trustee election shall be held each year. The board of trustees shall appoint a qualified individual to fill any vacancy on the board of trustees for the remainder of the unexpired term. No vacancy or vacancies on the board of trustees shall impair the power of the remaining trustees to administer the retirement system pending the filling of such vacancy or vacancies. The trustees shall serve without compensation, but shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177. A trustee shall serve until a successor qualifies, except that a trustee who is a member of the retirement system shall be disqualified as a trustee immediately upon ceasing to be a member of the retirement system. Each trustee shall be entitled to one vote on the board of trustees, and four trustees shall constitute a quorum for the transaction of any business. The board of trustees and the administrator of the retirement system shall administer the retirement system in compliance with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; and section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service. No member of the board of education or board of trustees shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to his or her retirement system duties. Beginning July 1, 2016, the board of education shall not have any duty or responsibility for the general administration of the retirement system, including the determination and calculation of the benefits of any member or beneficiary, except as may specifically be provided in the Class V School Employees Retirement Act.

(2) At any time that the retirement system consists of more than one Class V school district, the general administration of the retirement system is hereby vested in the board of trustees. The board of trustees shall consist of the following individuals: (a) Two members of the retirement system who are certificated staff elected by the members of the retirement system who are certificated staff; (b) one member of the retirement system who is classified staff elected by the members of the retirement system who are classified staff; (c) one member of the retirement system who is an annuitant elected by the members of the retirement system who are annuitants; (d) the superintendent of each of the school districts represented in the retirement system or his or her designee to serve as a voting, ex officio trustee; and (e) two business persons approved by the board of education qualified in financial affairs who are not members of the retirement system. The elections of the trustees who are members of the retirement system shall be arranged for, managed, and conducted by the board of trustees and, after the initial terms as otherwise designated, shall be for terms of four years. The business person trustees shall be recommended to four-year terms by the trustees who are not business

persons, and the appointments shall be approved by the board of education. The board of trustees shall appoint a qualified individual to fill any vacancy on the board of trustees for the remainder of the unexpired term. No vacancy or vacancies on the board of trustees shall impair the power of the remaining trustees to administer the retirement system pending the filling of such vacancy or vacancies. The trustees shall serve without compensation, but shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177. A trustee shall serve until a successor qualifies, except that a trustee who is a member of the retirement system shall be disqualified as a trustee immediately upon ceasing to be a member of the retirement system. Each trustee shall be entitled to one vote on the board of trustees, and four trustees shall constitute a quorum for the transaction of any business. The board of trustees and the administrator of the retirement system shall administer the retirement system in compliance with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; and section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service. No member of the board of education or board of trustees shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violations of law, for actions relating to his or her retirement system duties. The board of education shall not have any duty or responsibility for the general administration of the retirement system, including the determination and calculation of the benefits of any member or beneficiary, except as may specifically be provided in the Class V School Employees Retirement Act.

**Source:** Laws 1951, c. 274, § 3, p. 913; Laws 1963, c. 490, § 1, p. 1564; Laws 1979, LB 135, § 1; Laws 1981, LB 204, § 157; Laws 1993, LB 107, § 2; Laws 1995, LB 505, § 2; R.S.Supp., 1995, § 79-1034; Laws 1996, LB 900, § 615; Laws 1998, LB 497, § 9; Laws 2001, LB 711, § 5; Laws 2006, LB 1024, § 61; Laws 2012, LB916, § 24; Laws 2014, LB1042, § 8; Laws 2016, LB447, § 17.

**79-981 Employees retirement system; board of trustees; rules and regulations; administrator; employees compensation; records required.**

The board of trustees shall from time to time establish rules and regulations for the administration of the retirement system and for the transaction of its business and shall appoint an administrator of the retirement system. The board of trustees may contract for such medical and other services as shall be required to transact the business of the retirement system. Beginning on March 31, 2016, neither the board of education nor the board of trustees shall establish any further rules or regulations related to the investment of the assets of the retirement system without first consulting with the state investment officer. Beginning January 1, 2017, all rules and regulations adopted and promulgated under this section related to the investment of assets of the

retirement system terminate. Compensation for all persons employed by the board of trustees and all other expenses of the board of trustees necessary for the proper and efficient operation of the retirement system shall be paid in such amounts as the board of trustees determines and approves. Beginning January 1, 2017, all expenses related to the investment of the assets of the retirement system shall be paid in such amounts as the state investment officer determines and approves.

In addition to such duties and other duties arising out of the Class V School Employees Retirement Act not specifically reserved or assigned to others, the board of education shall maintain a separate account of each member's retirement account information as indicated in section 79-989, the record of which shall be available in a timely manner to the member and the board of trustees upon request. The board of trustees shall compile such data as may be necessary for the required actuarial valuation, consider and pass on all applications for annuities or other benefits and have examinations made when advisable of persons receiving disability benefits, and direct and determine all policies necessary in the administration of the act.

**Source:** Laws 1951, c. 274, § 4, p. 913; Laws 1985, LB 215, § 2; Laws 1991, LB 350, § 2; R.S.1943, (1994), § 79-1035; Laws 1996, LB 900, § 616; Laws 1998, LB 497, § 10; Laws 2001, LB 711, § 6; Laws 2006, LB 1024, § 62; Laws 2016, LB447, § 18.

#### **79-982 Employees retirement system; board of trustees; meetings; duties.**

The board of trustees shall (1) hold regular meetings annually and such special meetings at such times as may be deemed necessary, which meetings shall be open to the public, (2) keep a record of all the proceedings of such meetings, (3) prior to January 1, 2017, and subject to the approval of the board of education, invest all cash income not required for current payments in securities of the type provided in section 79-9,107 and so reinvest the proceeds from the sale or redemption of investments, and (4) supervise the affairs of the retirement system related to the administration of benefits and approve any changes in the administration of the retirement system essential to the actuarial requirements of the retirement system.

**Source:** Laws 1951, c. 274, § 5, p. 914; Laws 1955, c. 321, § 1, p. 992; Laws 1979, LB 187, § 242; Laws 1993, LB 107, § 3; R.S.1943, (1994), § 79-1036; Laws 1996, LB 900, § 617; Laws 2001, LB 711, § 7; Laws 2016, LB447, § 19.

#### **79-982.01 Employees retirement system; board of trustees; duties.**

(1) The members of the board of trustees shall have the responsibility for the administration of the retirement system pursuant to section 79-982, shall be deemed fiduciaries with respect to the administration of the retirement system, and shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section.

(2) As fiduciaries, the members of the board of trustees shall discharge their duties with respect to the retirement system solely in the interests of the members and beneficiaries of the retirement system for the exclusive purposes of providing benefits to members and members' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law at the time such duties are

discharged. The members of the board of trustees shall not have a duty in their official capacity to seek the enhancement of plan benefits through the legislative process if such benefits are not already contained within the plan documents. The members of the board of trustees 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.

**Source:** Laws 2016, LB447, § 20.

**79-982.02 Employees retirement system; investment of assets; board of trustees; duties; plan for transition of investment authority; contents; costs, fees, and expenses; state investment officer; report.**

(1) Beginning January 1, 2017, the board of trustees and the board of education shall not have the duty or authority to invest the assets of the retirement system, and the council and the state investment officer shall have the duty and authority to invest such assets in accordance with the Nebraska State Funds Investment Act. The board of trustees shall be responsible for administering the noninvestment affairs of the retirement system, including the payment of plan benefits and management of the actuarial requirements of the retirement system.

(2) On or before July 1, 2016, the board of trustees, or its designee, and the state investment officer shall enter into a plan for the transition of the investment authority from the board of trustees to the council. The plan shall include, but not be limited to, the following items:

(a) The board of trustees shall provide to the state investment officer by July 1, 2016, an accounting of the assets in the retirement system and a detailed description of the investments;

(b) The board of trustees shall provide to the state investment officer by July 1, 2016, a list containing the name, mailing address, telephone number, and email address of all managers, advisers, and custodians who are providing services related to the assets of the retirement system;

(c) The board of trustees shall provide to the state investment officer by July 1, 2016, a copy of all agreements and instruments related to the investment, management, and custody of the assets;

(d) The board of trustees shall assign investment authority and responsibility for investment-related agreements and instruments to the council by January 1, 2017, as determined by the state investment officer in his or her sole discretion;

(e) The board of trustees shall provide to the state investment officer by July 1, 2016, a copy of the most recent asset liability study, and in its sole discretion, the council may require the preparation of an updated asset liability study;

(f) The board of trustees shall provide to the state investment officer by July 1, 2016, a copy of the most recent actuarial valuation and audited certified annual financial report of the plan; and

(g) The state investment officer and the board of trustees shall identify items that will need to be addressed prior to the transition of investment authority on January 1, 2017.

(3) All costs, fees, and expenses incurred after March 31, 2016, related to the transition of the investment authority from the board of trustees and the board of education to the council and the state investment officer shall be paid from

the assets of a retirement system provided for under the Class V School Employees Retirement Act and to the extent such costs, fees, and expenses are incurred by the council or the state investment officer, they shall be paid in accordance with sections 72-1249 and 72-1249.02. The state investment officer shall provide a quarterly report to the board of trustees regarding the assets of the retirement system and related costs, fees, and expenses.

**Source:** Laws 2016, LB447, § 21.

**Cross References**

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

**79-983 Employees retirement system; administrator; appointment; retirement system staff.**

The administrator of the retirement system shall be appointed by the board of trustees and approved by the board of education. The administrator of the retirement system shall serve at the pleasure of the board of trustees. The administrator shall hire, dismiss, and otherwise supervise the other staff of the retirement system, shall keep the minutes and records of the retirement system, shall be the executive officer in charge of the administration of the detailed affairs of the retirement system, and shall perform such other duties as may be assigned by the board of trustees. The administrator and retirement system staff shall be employees of the Class V school district, with compensation and the benefits as available to school district employees determined by the board of trustees. The retirement system shall reimburse the Class V school district for all employee costs of salary, employment taxes, and benefits provided to the administrator and retirement system staff. The administrator shall serve as a nonvoting, ex officio member of the council and shall not be deemed a fiduciary of the council.

**Source:** Laws 1951, c. 274, § 6, p. 915; Laws 1991, LB 350, § 3; R.S.1943, (1994), § 79-1037; Laws 1996, LB 900, § 618; Laws 2006, LB 1024, § 63; Laws 2016, LB447, § 22.

**79-984 Employees retirement system; actuary; duties.**

The board of trustees shall contract for the services of an actuary who shall be the technical advisor of the board of trustees on matters regarding the operation of the retirement system. The selection of the actuary shall be approved by the board of education. The actuary shall (1) make a general investigation of the operation of the retirement system annually, which investigation shall cover mortality, retirement, disability, employment, turnover, interest, and earnable compensation, and (2) recommend tables to be used for all required actuarial calculations. The actuary shall perform such other duties as may be assigned by the board of trustees.

**Source:** Laws 1951, c. 274, § 7, p. 915; R.S.1943, (1994), § 79-1038; Laws 1996, LB 900, § 619; Laws 1998, LB 497, § 11; Laws 2001, LB 711, § 8; Laws 2006, LB 1024, § 64; Laws 2013, LB263, § 21; Laws 2016, LB447, § 23.

**79-985 Employees retirement system; legal advisor.**

The board of trustees may contract for the services of a legal advisor to the board of trustees.

**Source:** Laws 1951, c. 274, § 8, p. 915; R.S.1943, (1994), § 79-1039; Laws 1996, LB 900, § 620; Laws 2006, LB 1024, § 65; Laws 2016, LB447, § 24.

**79-986 Employees retirement system; school district as treasurer; when; duties; State Treasurer as treasurer; when; duties.**

Prior to January 1, 2017, the school district, if there is only one Class V school district in the retirement system, or the Class V school district designated by the Class V Retirement System Board, if there is more than one Class V school district in the retirement system, shall act as the treasurer of the system and the official custodian of the cash and securities belonging to the retirement system, shall provide adequate safe deposit facilities for the preservation of such securities, and shall hold such cash and securities subject to the order of the board of education or Class V Retirement System Board.

Beginning January 1, 2017, the State Treasurer shall act as treasurer of the retirement system and the official custodian of the cash and securities belonging to the system, shall provide adequate safe deposit facilities for the preservation of such securities, and shall hold such cash and securities subject to the order of the council.

The school district or designated school district shall receive all items of taxes or cash belonging to the retirement system and shall deposit in banks approved by the board of education or Class V Retirement System Board and, beginning January 1, 2017, banks approved by the State Treasurer, all such amounts in trust or custodial accounts. Notwithstanding any limitations elsewhere imposed by statute on the location of the retirement system's depository bank, such limitations shall not apply to the use of depository banks for the custody of the system's cash, securities, and other investments.

Prior to January 1, 2017, the school district or designated school district, as treasurer of the system, shall make payments for purposes specified in the Class V School Employees Retirement Act.

Beginning January 1, 2017, the State Treasurer as treasurer of the retirement system shall make payments to the school district upon request of the administrator of a retirement system provided for under the Class V School Employees Retirement Act and as directed by the Nebraska Public Employees Retirement Systems. The school district shall use payments received from the State Treasurer to make payments for purposes specified in the Class V School Employees Retirement Act. All banks and custodians which receive and hold securities and investments for the retirement system may hold and evidence such securities by book entry account rather than obtaining and retaining the original certificate, indenture, or governing instrument for such security.

**Source:** Laws 1951, c. 274, § 9, p. 915; Laws 1988, LB 1142, § 11; Laws 1995, LB 505, § 3; Laws 1996, LB 604, § 11; R.S.Supp.,1995, § 79-1040; Laws 1996, LB 900, § 621; Laws 1997, LB 623, § 30; Laws 1998, LB 497, § 12; Laws 2006, LB 1024, § 66; Laws 2016, LB447, § 25.

**79-987 Employees retirement system; audits; cost; report.**



(1) An annual audit of the affairs of the retirement system shall be conducted in each fiscal year. At the option of the board of trustees, such audit may be conducted by a certified public accountant or the Auditor of Public Accounts. The costs of such audit shall be paid from funds of the retirement system. A copy of such audit shall be filed with the Auditor of Public Accounts.

(2) Each audit year an annual financial audit of the investments of the retirement system shall be conducted. At the option of the council, such audit may be conducted by a certified public accountant or the Auditor of Public Accounts. The costs of such audit shall be paid from funds of the retirement system. A copy of such audit shall be filed with the board of trustees and the Auditor of Public Accounts.

(3) Beginning May 1, 2017, and until May 1, 2018, if such retirement plan is a defined benefit plan, the board of trustees shall cause to be prepared an annual report and the administrator shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. Beginning May 1, 2018, the board of trustees shall cause to be prepared an annual report and the administrator shall file the same with the Auditor of Public Accounts and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report submitted to the committee and the Auditor of Public Accounts shall be submitted electronically. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to section 79-979. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members of the American Academy of Actuaries and meet the academy's qualification standards to render a statement of actuarial opinion, 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 shall be presented to the Nebraska Retirement Systems Committee of the Legislature at a public hearing.

**Source:** Laws 1951, c. 274, § 19, p. 921; Laws 1973, LB 215, § 1; R.S.1943, (1994), § 79-1050; Laws 1996, LB 900, § 622; Laws 1998, LB 1191, § 61; Laws 1999, LB 795, § 13; Laws 2001, LB 711, § 9; Laws 2006, LB 1019, § 10; Laws 2011, LB509, § 34; Laws 2012, LB782, § 157; Laws 2013, LB263, § 22; Laws 2014, LB1042, § 9; Laws 2016, LB447, § 26; Laws 2017, LB415, § 36.

**79-988.01 Repealed. Laws 2016, LB447, § 54.**

**79-989 Employees retirement system; board of education; records available.**

The board of education shall have available records showing the name, address, title, social security number, beneficiary records, annual compensation, sex, date of birth, length of creditable and noncreditable service in hours, standard hours, and contract days, bargaining unit, and annual contributions of each employee entitled to membership in the retirement system and such other information as may be reasonably requested by the board of trustees regarding such member as may be necessary for actuarial study and valuation and the

administration of the retirement system. This information shall be available in a timely manner to the board of trustees upon request.

**Source:** Laws 1951, c. 274, § 11, p. 917; R.S.1943, (1994), § 79-1042; Laws 1996, LB 900, § 624; Laws 2016, LB447, § 27.

**79-990 Employees retirement system; time served in armed forces or on leave of absence; resignation for maternity purposes; effect.**

(1) Any member who is eligible for reemployment on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., as adopted under section 55-161, or who is eligible for reemployment under section 55-160 may pay to the retirement system after the date of his or her return from active military service, and within the period required by law, not to exceed five years, an amount equal to the sum of all deductions which would have been made from the salary which he or she would have received during the period of military service for which creditable service is desired. If such payment is made, the member shall be entitled to credit for membership service in determining his or her annuity for the period for which contributions have been made and the board of education shall be responsible for any funding necessary to provide for the benefit which is attributable to this increase in the member's creditable service. The member's payments shall be paid as the board of trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary.

(2) Under such rules and regulations as the board of trustees may prescribe, any member who was away from his or her position while on a leave of absence from such position authorized by the board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for any or all time he or she was on leave of absence. Such time shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on salary at the level received immediately prior to the leave of absence. Such credit shall be received if such member pays into the retirement system (a) an amount equal to the sum of the deductions from his or her salary for the portion of the leave for which creditable service is desired, (b) any contribution which the school district would have been required to make for the portion of the leave for which creditable service is desired had he or she continued to receive salary at the level received immediately prior to the leave of absence, and (c) interest on these combined payments from the date such deductions would have been made to the date of repayment determined by using the rate of interest for interest on such purchases of service credit. Such amounts shall be paid as the board of trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of the termination of his or her leave of absence. Interest on any delayed payment shall be at the rate of interest for determining interest on delayed payments by members to the retirement system. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary, and if payments are made on an installment basis,

creditable service will be credited only as payment has been made to the retirement system to purchase each additional one-tenth-year increment. Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence, the member must have returned to employment with the school district within one year after termination of the leave of absence.

(3) Until one year after May 2, 2001, any member currently employed by the school district who resigned from full-time employment with the school district for maternity purposes prior to September 1, 1979, and was reemployed as a full-time employee by the school district before the end of the school year following the school year of such member's resignation may have such absence treated as though the absence was a leave of absence described in subsection (2) of this section. The period of such absence for maternity purposes shall be included in creditable service when determining the member's eligibility for death, disability, termination, and retirement benefits if the member submits satisfactory proof to the board of education that the prior resignation was for maternity purposes and the member complies with the payment provisions of subsection (2) of this section before the one-year anniversary of May 2, 2001.

**Source:** Laws 1951, c. 274, § 12, p. 917; Laws 1981, LB 369, § 1; Laws 1982, LB 131, § 3; Laws 1988, LB 551, § 3; Laws 1991, LB 350, § 4; Laws 1992, LB 1001, § 21; Laws 1993, LB 107, § 4; Laws 1995, LB 505, § 4; Laws 1996, LB 847, § 26; R.S.Supp., 1995, § 79-1043; Laws 1996, LB 900, § 625; Laws 1996, LB 1076, § 12; Laws 2001, LB 711, § 10; Laws 2002, LB 722, § 7; Laws 2005, LB 364, § 12; Laws 2010, LB950, § 18; Laws 2013, LB263, § 23; Laws 2016, LB447, § 28.

**79-991 Employees retirement system; member; prior service credit; how obtained.**

(1) An employee who becomes a member without prior service credit may purchase prior service credit, not to exceed the lesser of ten years or the member's years of membership service, for the period of service the member was employed by a school district or by an educational service unit and which is not used in the calculation of any retirement or disability benefit having been paid, being paid, or payable in the future to such member under any defined benefit retirement system or program maintained by such other school district or educational service unit. The purchase of prior service credit shall be made in accordance with and subject to the following requirements:

(a) A member who desires to purchase prior service credit shall make written application to the administrator of the retirement system that includes all information and documentation determined by the administrator as necessary to verify the member's prior service and qualification to purchase the prior service credit. Such application shall include the member's written authorization for the administrator to request and receive from any of the member's former employers verification of the member's prior service, salary, and other information for determining the member's eligibility to purchase prior service

credit. Before prior service credit may be purchased, the administrator shall have received verification of the member's salary in each year with the other school district or educational service unit and confirmation that the prior service to be purchased by the member is not also credited in the calculation of a retirement or disability benefit for such member under another defined benefit retirement system or program. The member's application to purchase prior service credit may be made at any time before the fifth anniversary of the member's membership in the retirement system or, if earlier, the member's termination of employment with the school district;

(b) The member shall pay to the retirement system the total amount he or she would have contributed to the retirement system had he or she been a member of the retirement system during the period for which prior service is being purchased, together with interest thereon as determined using the rate of interest for the purchase of prior service credit. Such payment shall be based on the most recent years' salary the member earned in another school district or educational service unit if the salary is verified by the other school district or educational service unit or, if not, the payment shall be based on the member's annual salary at the time he or she became a member;

(c) Payments by the member for the purchase of the prior service credit shall be paid as the board of trustees may direct through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of membership. Interest on delayed payments shall be at the rate of interest for determining interest on delayed payments by members to the retirement system. In the event the member terminates employment with the school district for any reason before full payment for the prior service has been made, the remaining installments shall be immediately due and payable to the retirement system. Prior service credit may be purchased only in one-tenth-year increments, and if payments are made on an installment basis, the prior service will be credited only as payment has been made to the retirement system. If the prior service to be purchased by the member exceeds the member's membership service at the time of application or any subsequent date, such excess prior service shall be credited to the member only as the member completes and is credited additional membership service, in one-tenth-year increments, notwithstanding the member's payment for such prior service credit. If the member retires or terminates employment before completing sufficient membership service to permit all of the excess prior service that has been purchased by the member to be credited to such member, the retirement system shall refund to the member, or to the member's beneficiary if the member's termination is due to his or her death, the payments that have been made to the retirement system for such uncredited prior service, together with regular interest on such refund; and

(d) The school district shall contribute to the retirement system an amount equal to the amount paid by each member for the purchase of prior service credit at the time such payments are made by such member.

(2) Any employee who became a member before July 1, 2014, and who has five or more years of creditable service and any employee who became a member for the first time on or after July 1, 2014, and who has ten or more years of creditable service, excluding in either case years of prior service acquired pursuant to section 79-990, 79-994, 79-995, or 79-997, or subsection (1) of this section, may elect to purchase up to a total of five years of additional

creditable service under the retirement system, and upon such purchase the member shall be given the same status as though he or she had been a member of the retirement system for such additional number of years, except as otherwise specifically provided in the Class V School Employees Retirement Act. Creditable service may be purchased only in one-tenth-year increments. The amount to be paid to the retirement system for such creditable service shall be equal to the actuarial cost to the retirement system of the increased benefits attributable to such additional creditable service as determined by the retirement system's actuary at the time of the purchase pursuant to actuarial assumptions and methods adopted by the board of trustees for this purpose. The election to purchase additional creditable service may be made at any time before the member's termination of employment, and all payments for the purchase of such creditable service must be completed within five years after the election or before the member's termination or retirement, whichever event occurs first. Payment shall be made as the board of trustees may direct through a single payment to the retirement system, on an installment basis, including payments pursuant to a binding irrevocable payroll deduction authorization between the member and the school district, or by such other method approved by the board of trustees and permitted by law. If payments are made on an installment basis, creditable service will be credited only as payment has been made to the retirement system to purchase each additional one-tenth-year increment. Interest shall be charged on installment payments at the rate of interest for determining interest on delayed payments by members to the retirement system.

**Source:** Laws 1951, c. 274, § 14, p. 918; Laws 1953, c. 308, § 3, p. 1029; Laws 1982, LB 131, § 5; Laws 1987, LB 298, § 8; Laws 1988, LB 551, § 4; Laws 1992, LB 1001, § 23; Laws 1993, LB 107, § 5; Laws 1995, LB 505, § 6; R.S.Supp., 1995, § 79-1045; Laws 1996, LB 900, § 626; Laws 1997, LB 624, § 24; Laws 1998, LB 497, § 15; Laws 2005, LB 364, § 13; Laws 2013, LB263, § 24; Laws 2014, LB1042, § 10; Laws 2016, LB447, § 29.

**79-992 Employees retirement system; termination of employment; refunds; reemployment.**

(1) A member who has five years or more of creditable service, excluding years of prior service acquired pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, and who terminates his or her employment may elect to leave his or her contributions in the retirement system, in which event he or she shall receive a retirement allowance at normal retirement age based on the annuity earned to the date of such termination of employment. Such member may elect to receive a retirement allowance at early retirement age if such member retires at an early retirement date. Such annuity shall be adjusted in accordance with section 79-9,100. Upon termination of employment, except on account of retirement, a member shall be entitled to receive refunds as follows: (a) An amount equal to the accumulated contributions to the retirement system by the member; and (b) any contributions made to a previously existing system which were refundable under the terms of that system. Any member receiving a refund of contributions shall thereby forfeit and relinquish all accrued rights in the retirement system including all accumulated creditable service, except that if any member who has withdrawn his or her contributions as provided in this section reenters the service of the district and again becomes a member of the

retirement system, he or she may restore any or all money previously received by him or her as a refund, including the interest on the amount of the restored refund for the period of his or her absence from the district's service as determined using the interest rate for interest on such restored refunds, and he or she shall then again receive credit for that portion of service which the restored money represents. Such restoration may be made as the board of trustees may direct through direct payments to the system or on an installment basis pursuant to a binding irrevocable payroll deduction authorized between the member and the school district over a period of not to exceed five years from the date of reemployment. Interest on delayed payments shall be at the rate of interest for determining interest on delayed payments by members to the retirement system. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary.

(2) Except as provided in section 79-992.01:

(a) A retired member who returns to employment as an employee of the school district shall again participate in the retirement system as a new member and shall make contributions to the retirement system commencing upon reemployment. The retirement annuity of a retired member who returns to employment with the school district shall continue to be paid by the retirement system. A retired member who returns to employment as an employee of the school district shall receive creditable service only for service performed after his or her return to employment and in no event shall creditable service which accrues or the compensation paid to the member after such return to employment after retirement increase the amount of the member's original retirement annuity; and

(b) Upon termination of employment of the reemployed member, the member shall receive in addition to the retirement annuity which commenced at the time of the previous retirement (i) if the member has accrued five years or more of creditable service after his or her return to employment, excluding years of prior service acquired pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, a retirement annuity as provided in section 79-999 or 79-9,100, as applicable, calculated solely on the basis of creditable service and final average compensation accrued and earned after the member's return to employment after his or her original retirement, and as adjusted to reflect any payment in other than the normal form or (ii) if the member has not accrued five years or more of creditable service after his or her return to employment, a refund equal to the member's accumulated contributions which were credited to the member after the member's return to employment. In no event shall the member's creditable service which accrued prior to a previous retirement be considered as part of the member's creditable service after his or her return to employment for any purpose of the Class V School Employees Retirement Act.

(3) In the event a member is entitled to receive a refund of contributions pursuant to subsection (1) or subdivision (2)(b)(ii) of this section in an amount greater than one thousand dollars, if the member does not elect to have the refund paid directly to himself or herself or transferred to an eligible retirement plan designated by the member as a direct rollover pursuant to section 79-998, then the refund of contributions shall be paid in a direct rollover to an individual retirement plan designated by the board of trustees.

**Source:** Laws 1951, c. 274, § 18, p. 920; Laws 1955, c. 321, § 2, p. 992; Laws 1963, c. 490, § 3, p. 1565; Laws 1967, c. 544, § 3, p. 1789;

Laws 1972, LB 1116, § 2; Laws 1982, LB 131, § 8; Laws 1985, LB 215, § 7; Laws 1987, LB 298, § 10; Laws 1988, LB 551, § 6; Laws 1992, LB 1001, § 25; Laws 1993, LB 107, § 9; R.S.1943, (1994), § 79-1049; Laws 1996, LB 900, § 627; Laws 1997, LB 624, § 25; Laws 1998, LB 497, § 16; Laws 2001, LB 711, § 11; Laws 2005, LB 364, § 14; Laws 2006, LB 1019, § 11; Laws 2013, LB263, § 25; Laws 2016, LB447, § 30; Laws 2017, LB415, § 37.

**79-992.01 Termination of employment; employer; duties; member; duties.**

(1) An employer participating in a retirement system established pursuant to the Class V School Employees Retirement Act shall:

(a) Notify the board of trustees in writing of the date upon which a termination of employment has occurred and provide the board of trustees with such information as the board of trustees deems necessary;

(b) Notify the board of trustees in writing whether or not a member accepted and received an early retirement inducement; and

(c) Submit in writing with the notice of termination of employment and notice of receipt of an early retirement inducement a completed certification by the employer and member under penalty of prosecution pursuant to section 79-992.02 that, prior to the member's termination, there was no prearranged written or verbal agreement for the member to return to service in any capacity with the same employer.

(2) The member shall submit to the board of trustees upon the member's termination, under penalty of prosecution pursuant to section 79-992.02, completed certification on forms prescribed by the board of trustees stating whether or not the member accepted and received an early retirement inducement from his or her employer.

(3) The board of trustees may adopt and promulgate rules and regulations and prescribe forms as the board determines appropriate in order to carry out this section and to ensure full disclosure and reporting by the employer and member in order to minimize fraud and abuse and the filing of false or fraudulent claim or benefit applications.

**Source:** Laws 2017, LB415, § 38.

**79-992.02 False or fraudulent claim or benefit application; prohibited acts; penalty.**

(1) Any person who, knowing it to be false or fraudulent, presents or causes to be presented a false or fraudulent claim or benefit application, any false or fraudulent proof in support of such a claim or benefit, or false or fraudulent information which would affect a future claim or benefit application to be paid under a retirement system for the purpose of defrauding or attempting to defraud the retirement system shall be guilty of a Class II misdemeanor. The board of trustees shall deny any benefits that it determines are based on false or fraudulent information and shall have a cause of action against the member to recover any benefits already paid on the basis of such information.

(2) Any employee, member of a board of education, or agent of any employer who willfully fails or refuses to furnish to the board of trustees upon its request and in the manner prescribed by it such information, data, or records, as may

be necessary for carrying into effect the Class V School Employees Retirement Act, shall be guilty of a Class V misdemeanor.

**Source:** Laws 2017, LB415, § 39.

**79-996 Contributions; how paid.**

The payments provided for by sections 79-993, 79-994, and 79-997 may be made in equal installments over a period of not to exceed two years from the date of the election to make such payments. The payments provided for by section 79-995 may be made in equal installments over a period of not to exceed three years from the date of election to make such payments. Any person who elects to make payments on an installment basis shall be credited with prior service only in six-month increments and only after payment has been made to the retirement system to purchase each additional six-month increment.

**Source:** Laws 1987, LB 298, § 4; Laws 1988, LB 551, § 7; R.S.1943, (1994), § 79-1049.04; Laws 1996, LB 900, § 631; Laws 2013, LB263, § 26; Laws 2016, LB447, § 31.

**79-998 Additional service credits; accept payments and rollovers; limitations; how treated; tax consequences; direct transfer to retirement plan.**

(1) The retirement system may accept as payment for additional service credit that is purchased pursuant to sections 79-990 to 79-992 an eligible rollover distribution from or on behalf of the member who is making payments for such service credit if the eligible rollover distribution does not exceed the amount of payment required for the service credit being purchased by the member. The eligible rollover distribution may be contributed to the retirement system by the member or directly transferred from the plan that is making the eligible rollover distribution on behalf of the member. Contribution by a member pursuant to this section may only be made in the form of a cash contribution. For purposes of this section, an eligible rollover distribution means all or any portion of an amount that qualifies as an eligible rollover distribution under the Internal Revenue Code from:

(a) A plan of another employer which is qualified under section 401(a) or 403(a) of the Internal Revenue Code;

(b) An annuity contract or custodial account described in section 403(b) of the Internal Revenue Code;

(c) An eligible deferred compensation plan under section 457(b) of the Internal Revenue Code which is maintained by a governmental employer described in section 457(e)(1)(A) of the Internal Revenue Code; or

(d) An individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over to an employer plan under the Internal Revenue Code.

(2) The retirement system may accept as payment for service credit that is purchased pursuant to sections 79-990 to 79-992 a direct trustee-to-trustee transfer from an eligible deferred compensation plan as described in section 457(e)(17) of the Internal Revenue Code on behalf of a member who is making payments for such service credit if the amount transferred from the eligible deferred compensation plan does not exceed the amount of payment required for the service credit being purchased and the purchase of such service credit



qualifies as the purchase of permissive service credit by the member as defined in section 415(n)(3) of the Internal Revenue Code.

(3) The board of trustees may establish rules, regulations, and limitations on the eligible rollover distributions and direct trustee-to-trustee transfers that may be accepted by the retirement system pursuant to this section, including restrictions on the type of assets that may be transferred to the retirement system.

(4) Cash and other properties contributed or transferred to the system pursuant to this section shall be deposited and held as a commingled asset of the system and shall not be separately accounted for or invested for the member's benefit. Contributions or direct transfers made by or on behalf of any member pursuant to this section shall be treated as qualifying payments under sections 79-990 to 79-992 and as employee contributions for all other purposes of the Class V School Employees Retirement Act except in determining federal and state tax treatment of distributions from the system.

(5) The system, the board of education, the board of trustees, and their respective members, officers, and employees shall have no responsibility or liability with respect to the federal and state income tax consequences of any contribution or transfer to the system pursuant to this section, and the board of trustees may require as a condition to the system's acceptance of any rollover contribution or transfer satisfactory evidence that the proposed contribution or transfer is a qualifying rollover contribution or trustee-to-trustee transfer under the Internal Revenue Code and reasonable releases or indemnifications from the member against any and all liabilities which may in any way be connected with such contribution or transfer.

(6) Effective January 1, 1993, any member who is to receive an eligible rollover distribution, as defined in the Internal Revenue Code, from the system may, in accordance with such rules, regulations, and limitations as may be established by the board of trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code. Any such election shall be made in the form and within the time periods established by the board of trustees.

(7) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after September 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the system may, in accordance with such rules, regulations, and limitations as may be established by the board of trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(8) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(9) All distributions from the system shall be subject to all withholdings required by federal or state tax laws.

**Source:** Laws 1992, LB 1001, § 27; Laws 1993, LB 107, § 10; Laws 1995, LB 574, § 76; R.S.Supp.,1995, § 79-1049.06; Laws 1996, LB 900, § 633; Laws 1998, LB 497, § 20; Laws 2001, LB 711, § 12; Laws 2002, LB 407, § 47; Laws 2012, LB916, § 25; Laws 2016, LB447, § 32.

**79-9,100 Employees retirement system; formula retirement annuity; computation.**

(1) In lieu of the retirement annuity provided by section 79-999 or 79-9,113, any member who becomes eligible to receive a retirement annuity after February 20, 1982, under the Class V School Employees Retirement Act shall receive a formula retirement annuity based on final average compensation, except that if the monthly formula retirement annuity based on final average compensation is less than the monthly retirement annuity specified in section 79-999 or 79-9,113, accrued to the date of retirement or August 31, 1983, whichever first occurs, the member shall receive the monthly retirement annuity specified in section 79-999 or 79-9,113 accrued to the date of retirement or August 31, 1983, whichever first occurs.

(2) The monthly formula retirement annuity based on final average compensation shall be determined by multiplying the number of years of creditable service for which such member would otherwise receive the retirement annuity provided by section 79-999 or 79-9,113 by one and one-half percent of his or her final average compensation. For retirements after June 15, 1989, and before April 18, 1992, the applicable percentage shall be one and sixty-five hundredths percent of his or her final average compensation. For retirements on or after April 18, 1992, and before June 7, 1995, the applicable percentage shall be one and seventy-hundredths percent of his or her final average compensation. For retirements on or after June 7, 1995, and before March 4, 1998, the applicable percentage shall be one and eighty-hundredths percent of his or her final average compensation. For retirements on or after March 4, 1998, and before March 22, 2000, the applicable percentage shall be one and eighty-five hundredths percent of his or her final average compensation. For retirements on or after March 22, 2000, the applicable percentage shall be two percent of his or her final average compensation.

(3) Final average compensation shall be determined:

(a) Except as provided in subdivision (3)(b) of this section, by dividing the member's total compensation for the three fiscal years in which such compensation was the highest by thirty-six; and

(b) For an employee who became a member on or after July 1, 2013, by dividing the member's total compensation for the five fiscal years in which such compensation was the highest by sixty.

(4)(a) In the determination of compensation for members whose retirement date is on or after July 1, 2016, that part of a member's compensation for the plan year which exceeds the member's compensation for the preceding plan year by more than eight percent during the capping period shall be excluded. If the compensation for the preceding plan year was reduced as a result of unpaid absence from work, the compensation used in the capping calculation will be the greater of (i) the annualized compensation for the preceding year as if it

had been fully received or (ii) the most recent preceding plan year in which the member had no unpaid absence from work. Such member's compensation for the first plan year of the capping period shall be compared to the member's compensation received for the plan year immediately preceding the capping period. If the first plan year of the capping period is the member's first year of membership service, these capping provisions shall not be applied to that first plan year.

(b) For purposes of this subsection:

(i) Capping period means the five plan years preceding the later of (A) such member's retirement date or (B) such member's final compensation date; and

(ii) Final compensation date means the later of (A) the date on which a retiring member's final compensation is actually paid or (B) if a retiring member's final compensation is paid in advance as a lump sum, the date on which such final compensation would have been paid to the member in the absence of such advance payment.

(5) This subsection does not apply to employees who become members on or after July 1, 2016. If the annuity begins prior to the sixty-second birthday of the member and the member has completed thirty-five or more years of creditable service, the annuity shall not be reduced. For retirements on or after June 7, 1995, any retirement annuity which begins prior to the sixty-second birthday of the member shall be reduced by twenty-five hundredths percent for each month or partial month between the date the annuity begins and the member's sixty-second birthday. If the annuity begins at a time when:

(a) The sum of the member's attained age and creditable service is eighty-five or more, the annuity shall not be reduced;

(b) The sum of the member's attained age and creditable service totals eighty-four, the annuity shall not be reduced by an amount greater than three percent of the unreduced annuity;

(c) The sum of the member's attained age and creditable service totals eighty-three, the annuity shall not be reduced by an amount greater than six percent of the unreduced annuity; and

(d) The sum of the member's attained age and creditable service totals eighty-two, the annuity shall not be reduced by an amount greater than nine percent of the unreduced annuity.

(6) For purposes of this section, a member's creditable service and attained age shall be measured in one-half-year increments.

(7) The normal form of the formula retirement annuity based on final average compensation shall be an annuity payable monthly during the remainder of the member's life with the provision that in the event of his or her death before sixty monthly payments have been made the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until a total of sixty monthly payments have been made. A member may elect to receive, in lieu of the normal form of annuity, an actuarially equivalent annuity in any optional form provided by section 79-9,101.

(8) Any member receiving a formula retirement annuity based on final average compensation who is a member prior to July 1, 2016, shall also receive

the service annuity to be paid by the State of Nebraska as provided in sections 79-933 to 79-935 and 79-951.

**Source:** Laws 1982, LB 131, § 4; Laws 1985, LB 215, § 3; Laws 1989, LB 237, § 2; Laws 1992, LB 1001, § 22; Laws 1995, LB 505, § 5; R.S.Supp.,1995, § 79-1044.01; Laws 1996, LB 900, § 635; Laws 1998, LB 497, § 21; Laws 1998, LB 1191, § 62; Laws 2000, LB 155, § 2; Laws 2013, LB553, § 11; Laws 2015, LB446, § 5; Laws 2016, LB447, § 33.

**Cross References**

For supplemental retirement benefits, see sections 79-941 to 79-947.

**79-9,100.01 Employees retirement system; annuity reductions; when; computation.**

(1)(a) For employees who become members on or after July 1, 2016, and prior to July 1, 2018, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least fifty-five years of age, the annuity shall not be reduced.

(b) For employees who become members on or after July 1, 2018, if the annuity begins at a time when the sum of the member's attained age and creditable service totals eighty-five and the member is at least sixty years of age, the annuity shall not be reduced.

(2)(a) For an employee who becomes a member prior to July 1, 2018, if the annuity begins on or after the sixtieth birthday of the member and the member has completed at least a total of five years of creditable service, the annuity shall be reduced by twenty-five hundredths percent for each month or partial month between the date the annuity begins and the member's sixty-fifth birthday.

(b) For a member hired or rehired on or after July 1, 2018, if the annuity begins on or after the sixtieth birthday and the member has completed at least a total of five years of creditable service including eligibility and vesting credit but has not qualified for an unreduced annuity as specified in this section, the annuity shall be reduced by twenty-five hundredths percent for each month or partial month between the date the annuity begins and the member's sixty-fifth birthday.

(3) A member's attained age shall be measured in one-half-year increments.

(4) Except as provided in section 42-1107, the normal form of the formula retirement annuity based on final average compensation shall be an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until a total of sixty monthly payments have been made. A member may elect to receive, in lieu of the normal form of annuity, an actuarially equivalent annuity in any optional form provided by section 79-9,101.

(5) All formula annuities shall be paid from the Class V School Employees Retirement Fund.

**Source:** Laws 2016, LB447, § 34; Laws 2017, LB415, § 40.

**79-9,102 Employees retirement system; annuity or other benefit; limitations.**

(1) Notwithstanding any other provision of the Class V School Employees Retirement Act, no member or beneficiary of the retirement system shall receive in any calendar year an annuity or other benefit which would exceed the maximum benefit permitted under section 415 of the Internal Revenue Code, or any successor provision and the regulations issued thereunder, as they may be amended from time to time, and as adjusted as of January 1 of each calendar year to the dollar limitation as determined for such year by the Commissioner of Internal Revenue pursuant to section 415(d) of the Internal Revenue Code to reflect cost-of-living adjustments, and the amount of benefit to be paid to any member or beneficiary by the retirement system shall be adjusted each calendar year, if necessary, to conform with the maximum benefit permitted under section 415 of the Internal Revenue Code. The cost-of-living adjustment to the maximum benefit permitted under section 415 of the Internal Revenue Code shall apply to determining the maximum benefit of a member who severed employment or commenced receiving benefits prior to the effective date of the adjustment.

(2) Any payments provided for by sections 79-990, 79-991, and 79-992 for the purchase or restoration of creditable service shall be subject to the limitations of section 415 of the Internal Revenue Code on annual additions to the system, and the board of trustees may suspend payments, alter installment periods, or, if such suspension or alteration is not possible, deny the purchase of all or a portion of the creditable service desired to be purchased, as necessary to comply with the requirements of section 415 of the Internal Revenue Code.

(3) This section is intended to meet and incorporate the requirements of section 415 of the Internal Revenue Code and regulations under that section that are applicable to governmental plans and shall be construed in accordance with section 415 of the Internal Revenue Code and the regulations issued thereunder and shall, by this reference, incorporate any subsequent changes made to such section as the same may apply to the retirement system.

**Source:** Laws 1985, LB 215, § 8; Laws 1995, LB 574, § 75; R.S.Supp.,1995, § 79-1046.01; Laws 1996, LB 900, § 637; Laws 1997, LB 623, § 31; Laws 1998, LB 497, § 22; Laws 2013, LB263, § 27; Laws 2016, LB447, § 35.

**79-9,103 Annuity payment; cost-of-living adjustments; additional adjustments.**

(1) Any annuity paid on or after September 1, 1983, to a member who retired prior to February 21, 1982, pursuant to the Class V School Employees Retirement Act, or to such member's beneficiary, or to a person who retired under the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, or to such person's beneficiary, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1983, except that such increase shall not exceed the sum of one dollar and fifty cents per month for each year of creditable service and one dollar per month for each completed year of retirement as measured from the effective date of retirement to June 30, 1983. No separate adjustment in such annuity shall be made as a result of the changes made in section 79-9,113 pursuant to Laws 1983, LB 488. If a joint and survivor annuity was elected, the increase shall be actuarially adjusted so

that the joint and survivor annuity remains the actuarial equivalent of the life annuity otherwise payable.

(2) In addition to the cost-of-living adjustment provided in subsection (1) of this section, any annuity paid on or after September 1, 1986, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before September 1, 1985, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1986, except that such increase shall not exceed (a) three and one-half percent for annuities first paid on or after September 1, 1984, (b) seven percent for annuities first paid on or after September 1, 1983, but before September 1, 1984, or (c) ten and one-half percent for all other annuities.

(3) In addition to the cost-of-living adjustments provided in subsections (1) and (2) of this section, any annuity paid on or after September 1, 1989, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before September 1, 1988, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1989, except that such increase shall not exceed (a) three percent for annuities first paid on or after September 1, 1987, (b) six percent for annuities first paid on or after September 1, 1986, but before September 1, 1987, or (c) nine percent for all other annuities.

(4) In addition to the cost-of-living adjustments provided in subsections (1), (2), and (3) of this section, any annuity paid on or after September 1, 1992, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1991, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1992, except that such increase shall not exceed (a) three percent for annuities first paid after October 1, 1990, (b) six percent for annuities first paid after October 1, 1989, but on or before October 1, 1990, or (c) nine percent for all other annuities.

(5) In addition to the cost-of-living adjustments provided in subsections (1), (2), (3), and (4) of this section, any annuity paid on or after September 1, 1995, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1994, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1995, except that such increase shall not exceed (a) three percent for annuities first paid after October 1, 1993, (b) six percent for annuities first paid after October 1, 1992, but on or before October 1, 1993, or (c) nine percent for all other annuities.

(6) In addition to the cost-of-living adjustments provided in subsections (1), (2), (3), (4), and (5) of this section, any annuity paid pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 1, 1994, shall be subject to adjustment to equal the greater of (a) the annuity payable to the

member or beneficiary as adjusted, if applicable, under the provisions of subsection (1), (2), (3), (4), or (5) of this section or (b) ninety percent of the annuity which results when the original annuity that was paid to the member or beneficiary (before any cost-of-living adjustments under this section), is adjusted by the increase in the cost of living or wage levels between the commencement date of the annuity and June 30, 1995.

(7) In addition to the cost-of-living adjustments provided in subsections (1), (2), (3), (4), (5), and (6) of this section, any annuity paid on or after September 1, 1998, pursuant to the act or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 3, 1997, shall be adjusted by the increase in the cost of living or wage levels between the effective date of retirement and June 30, 1998, except that such increase shall not exceed (a) three percent for annuities first paid after October 1, 1996, (b) six percent for annuities first paid after October 1, 1995, but on or before October 1, 1996, or (c) nine percent for all other annuities.

(8) Beginning January 1, 2000, and on January 1 of every year thereafter, for employees of Class V school districts who were members prior to July 1, 2013, a cost-of-living adjustment shall be made for any annuity being paid pursuant to the act, or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 3 preceding such January 1 adjustment date. The cost-of-living adjustment for any such annuity shall be the lesser of (a) one and one-half percent or (b) the increase in the consumer price index from the date such annuity first became payable through the August 31 preceding the January 1 adjustment date as reduced by the aggregate cost-of-living adjustments previously made to the annuity pursuant to this section.

(9) Beginning January 1, 2014, and on January 1 of every year thereafter, for employees of Class V school districts who became members on or after July 1, 2013, a cost-of-living adjustment shall be made for any annuity being paid pursuant to the act and on which the first payment was dated on or before October 3 preceding such January 1 adjustment date. The cost-of-living adjustment for any such annuity shall be the lesser of (a) one percent or (b) the increase in the consumer price index from the date such annuity first became payable through the August 31 preceding the January 1 adjustment date as reduced by the aggregate cost-of-living adjustments previously made to the annuity pursuant to this section.

(10) Beginning September 1, 1999, the actuary shall make an annual valuation of the assets and liabilities of the system. If the annual valuation made by the actuary, as approved by the board of trustees, indicates that the system has sufficient actuarial surplus to provide for a cost-of-living adjustment in addition to the adjustment made pursuant to subsection (8) or (9) of this section, the board of trustees may, in its discretion, declare by resolution that each annuity being paid pursuant to the act, or pursuant to the provisions of the retirement system established by statute for employees of Class V school districts in effect prior to September 1, 1951, and on which the first payment was dated on or before October 3 of the year such resolution is adopted, shall be increased beginning as of the January 1 following the date of the board of trustees' resolution by such percentage as may be declared by the board of trustees,

except that such increase for any such annuity shall not exceed the increase in the consumer price index from the date such annuity first became payable through the applicable valuation date as reduced by the aggregate cost-of-living adjustments previously made to the annuity pursuant to this section.

(11) Except for the adjustments pursuant to subsection (13) of this section, the consumer price index to be used for determining any cost-of-living adjustment under this section shall be the Consumer Price Index - All Urban Consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor. If this consumer price index is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board of trustees, which shall be a reasonable representative measurement of the cost of living for retired employees. An annuity as increased by any cost-of-living adjustment made under this section shall be considered the base annuity amount for the purpose of future adjustments pursuant to this section. In no event shall any cost-of-living adjustment be deemed to affect or increase the amount of the base retirement annuity of a member as determined under section 79-999 or 79-9,100.

(12) Any decision or determination by the board of trustees (a) to declare or not declare a cost-of-living adjustment, (b) as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living adjustment, or (c) pursuant to the selection of a substitute index shall be made in the sole, absolute, and final discretion of the board of trustees and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system or increasing the benefits of members under the system, nor shall the board of education or board of trustees be constrained from supporting any such change to the system, notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board of trustees to declare future cost-of-living adjustments.

(13) The Legislature finds and declares that there exists in this state a pressing need to attract and retain qualified and dedicated public school employees and that one of the factors prospective public school employees consider when seeking or continuing public school employment is the retirement system and benefits the employment provides. The Legislature further finds that over the past decades, as reflected by the Medical Price Index published by the United States Department of Labor, the cost of medical care, including the cost of medications and insurance coverages, has increased at a rate in excess of that by which the Consumer Price Index - All Urban Consumers has increased. The Legislature further finds and declares that there accordingly exists a need to adjust the amount of retirement benefits paid to retired public school employees in order to assist them in meeting the increased cost of medical care. Therefor, in addition to the cost-of-living adjustments provided in subsections (1) through (12) of this section, commencing on October 3, 2001, and on October 3 of every year thereafter, a medical cost-of-living adjustment shall be paid to any annuitant who became a member prior to July 1, 2016, and has been paid an annuity from the retirement system for at least ten years through the October 3 adjustment date. The cost-of-living adjustment shall be paid in the form of a supplemental annuity providing monthly payments equal to the amount which results when (a) the fraction, not to exceed one, that results when the annuitant's years of creditable service at his or her retirement date is divided by twenty, is multiplied by (b) the product of ten dollars times



the number of years, including attained one-half years, that such annuitant has received annuity payments from the retirement system through the October 3 adjustment date. The supplemental annuity being paid to an annuitant shall increase by ten dollars on October 3 of each subsequent year to reflect the additional year of annuity payments to the annuitant until the total amount of the supplemental annuity is two hundred fifty dollars. In no event shall the medical cost-of-living adjustment for any annuitant pursuant to this subsection result in the payment of a supplemental annuity exceeding two hundred fifty dollars per month. The supplemental annuity paid to an annuitant pursuant to this subsection shall cease at the death of the annuitant regardless of the form of retirement annuity being paid to the annuitant at the time of his or her death.

**Source:** Laws 1983, LB 488, § 2; Laws 1986, LB 1048, § 5; Laws 1989, LB 237, § 8; Laws 1992, LB 1001, § 26; Laws 1993, LB 107, § 11; Laws 1995, LB 505, § 9; R.S.Supp.,1995, § 79-1056.06; Laws 1996, LB 900, § 638; Laws 1998, LB 497, § 23; Laws 2001, LB 711, § 14; Laws 2013, LB553, § 12; Laws 2016, LB447, § 36.

**79-9,104 Employees retirement system; annuities; benefits; exempt from claims of creditors; exceptions.**

(1) All annuities and other benefits payable under the Class V School Employees Retirement Act and all accumulated credits of members of the retirement system shall not be assignable or subject to execution, garnishment, or attachment except to the extent that such annuity or benefit is subject to a qualified domestic relations order as such term is defined in and which meets the requirements of section 414(p) of the Internal Revenue Code. Payments under such a qualified domestic relations order shall be made only after the administrator of the retirement system receives written notice of such order and such additional information and documentation as the administrator may require.

(2) In lieu of the assignment of a member's future annuity or benefit to the member's spouse or former spouse, the retirement system shall permit the spouse or former spouse of a member to receive, pursuant to a qualified domestic relations order, a single sum payment of a specified percentage of the member's accumulated contributions on the condition that upon the payment of such amount the spouse or former spouse shall have no further interest in the retirement system or in the remaining benefit of the member under the retirement system.

(3) A member's interest and benefits under the retirement system shall be reduced, either at termination of employment, retirement, disability, or death, by the actuarial value of the benefit assigned or paid to the member's spouse, former spouse, or other dependents under a qualified domestic relations order, as determined by the plan actuary on the basis of the actuarial assumptions then recommended by the actuary pursuant to section 79-984.

**Source:** Laws 1951, c. 274, § 29, p. 925; Laws 1991, LB 350, § 8; R.S.1943, (1994), § 79-1060; Laws 1996, LB 900, § 639; Laws 1997, LB 623, § 32; Laws 1998, LB 497, § 24; Laws 2000, LB 155, § 3; Laws 2012, LB916, § 26; Laws 2015, LB40, § 11.

**79-9,105 Employees retirement system; member; disability; benefits.**

(1) Any member with five or more years of creditable service, excluding years of prior service acquired pursuant to section 79-990, 79-991, 79-994, 79-995, or 79-997, who becomes totally disabled for further performance of duty on or after March 22, 2000, may be approved for deferred disability retirement by the board of trustees. In the case of such deferred disability retirement, the member, during the period specified in subsection (3) of this section, shall be credited with creditable service for each year or portion thereof, to be determined in accordance with policies of the board of trustees governing creditable service, that the member defers retirement, up to a maximum of thirty-five years of total creditable service, including creditable service accrued before the member became totally disabled. The member approved for deferred disability retirement may at any time of the member's choosing request the deferral to end and retirement annuity payments to begin. The retirement annuity of such member shall be based on the total number of years of the member's creditable service, including the years credited to the member during his or her total disability under this section, and the member's final average salary as of the date that the member became totally disabled and as adjusted from such date by a percentage equal to the cumulative percentage cost-of-living adjustments that were made or declared for annuities in pay status pursuant to section 79-9,103 after the date of the approval of the board of trustees for deferred disability retirement and before the cessation of the accrual of additional creditable service pursuant to subsection (3) of this section. Except as provided in subsection (4) of this section, the retirement annuity so determined for the member shall be payable to the member without reduction due to any early commencement of benefits, except that the retirement annuity shall be reduced by the amount of any periodic payments to such employee as workers' compensation benefits. Additional creditable service acquired through deferred disability retirement shall apply to the service requirements specified in section 79-9,106. The board of trustees shall consider a member to be totally disabled when it has received an application by the member and a statement by at least two licensed and practicing physicians designated by the board of trustees certifying that the member is totally and presumably permanently disabled and unable to perform his or her duties as a consequence thereof.

(2) Notwithstanding the provisions of subsection (1) of this section, the payment of the retirement annuity of a member may not be deferred later than the member's required beginning date as defined in section 401(a)(9) of the Internal Revenue Code, as defined in section 49-801.01. If the payment of a disabled member's retirement annuity is required to commence before the member has elected to end his or her deferred disability retirement, the amount of benefit that would have accrued pursuant to subsection (1) of this section in the fiscal year of the member's required beginning date, and in each subsequent fiscal year through the year of the member's election to end the deferred disability retirement period, shall be reduced, but not below zero, by the actuarial equivalent of the payments which were paid to the member during each such fiscal year and after the member's required beginning date. The retirement annuity of any member that commences before the end of the member's deferred disability retirement shall be adjusted as of each September 1 pursuant to the requirements of this subsection.

(3) The accrual of creditable service and any adjustment of final average salary provided in subsection (1) of this section shall begin from the first day of the month following the date of the first of the two examinations by which the

member is determined by the board of trustees to be totally disabled, shall continue only so long as the member does not receive any wages or compensation for services, and shall end at the earlier of (a) the time total disability ceases as determined by the board of trustees or (b) the date the member elects to end the deferred disability retirement and begin to receive his or her retirement annuity. The board of trustees may require periodic proof of disability but not more frequently than semiannually.

(4)(a) For an employee hired prior to July 1, 2018, the payment of any retirement annuity to a disabled member, which begins to be paid under this section (i) before the member's sixty-second birthday or (ii) at a time before the sum of the member's attained age and creditable service is eighty-five or more, shall be suspended if the board of trustees determines at any time before the member's sixty-second birthday that the member's total disability has ceased.

(b) For an employee hired on or after July 1, 2018, the payment of any retirement annuity to a disabled member, which begins to be paid under this section (i) before the member's sixty-fifth birthday or (ii) at a time before the sum of the member's attained age and creditable service is eighty-five or more, shall be suspended if the board of trustees determines at any time before the member's sixty-fifth birthday that the member's total disability has ceased.

(c) Payment of the retirement annuity of such member as determined under this section shall recommence at the member's early retirement date or normal retirement date but shall be subject to reduction at such time as specified in section 79-9,100.

**Source:** Laws 1951, c. 274, § 17, p. 919; Laws 1957, c. 354, § 2, p. 1202; Laws 1963, c. 490, § 2, p. 1565; Laws 1982, LB 131, § 7; Laws 1985, LB 215, § 6; Laws 1987, LB 298, § 9; Laws 1988, LB 551, § 5; Laws 1991, LB 350, § 6; Laws 1993, LB 107, § 8; R.S.1943, (1994), § 79-1048; Laws 1996, LB 900, § 640; Laws 2000, LB 155, § 4; Laws 2001, LB 711, § 15; Laws 2013, LB553, § 13; Laws 2016, LB447, § 37; Laws 2017, LB415, § 41.

**79-9,107 Employees retirement system; funds; investment; violations; penalty.**

The funds of the retirement system which are not required for current operations shall be invested and reinvested (1) before January 1, 2017, by the board of trustees subject to the approval of the board of education or Class V Retirement System Board as provided in sections 79-9,108 to 79-9,111 and (2) on and after January 1, 2017, by the council and the state investment officer in accordance with the Nebraska State Funds Investment Act without the approval of the board of education or board of trustees. Except as otherwise provided in the Class V School Employees Retirement Act, no trustee and no member of the board of education shall have any direct interest in the income, gains, or profits of any investment made by the board of trustees, nor shall any such person receive any pay or emolument for services in connection with any such investment. Neither the state investment officer nor any trustee, member of the board of education, nor member of the council shall become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the

retirement system. Any person who violates any of these restrictions shall be guilty of a Class II misdemeanor.

**Source:** Laws 1951, c. 274, § 20, p. 921; Laws 1967, c. 545, § 1, p. 1791; Laws 1977, LB 39, § 257; Laws 1986, LB 1048, § 1; Laws 1989, LB 237, § 4; R.S.1943, (1994), § 79-1051; Laws 1996, LB 900, § 642; Laws 1998, LB 497, § 25; Laws 2006, LB 1024, § 67; Laws 2016, LB447, § 38.

**Cross References**

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

**79-9,108 Employees retirement system; funds; investment.**

(1) Prior to January 1, 2017, the board of trustees, with approval of the board of education or Class V Retirement System Board, shall invest and reinvest funds of the retirement system. Beginning January 1, 2017, the funds of the retirement system shall be invested and reinvested solely by the council and the state investment officer in accordance with the Nebraska State Funds Investment Act.

(2) Prior to January 1, 2017, a professional investment manager may be employed by the board of trustees subject to approval of the board of education or Class V Retirement System Board. The professional investment manager shall be responsible for the purchase, sale, exchange, investment, or reinvestment of such funds subject to guidelines determined by the board of trustees. Prior to January 1, 2017, the trustees shall each month submit a report to the board of education or Class V Retirement System Board with respect to the investment of funds. The board of education or Class V Retirement System Board shall approve or disapprove the investments in the report, and in the event of disapproval of any investment, the board of trustees shall direct the sale of all or part of such investment or establish future policy with respect to that type of investment. Beginning January 1, 2017, the funds of the retirement system shall be invested and reinvested by the council and the state investment officer, who may employ advisers, counsel, managers, and other professionals in accordance with the Nebraska State Funds Investment Act.

(3) Beginning January 1, 2017, the board of trustees and the board of education shall not have any duty, responsibility, or authority for the investment and reinvestment of the funds of the retirement system, or any investment decision, contract, rule, or regulation related thereto.

**Source:** Laws 1967, c. 545, § 2, p. 1791; Laws 1991, LB 350, § 7; R.S.1943, (1994), § 79-1051.01; Laws 1996, LB 900, § 643; Laws 2006, LB 1024, § 68; Laws 2016, LB447, § 39.

**Cross References**

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

**79-9,109 Employees retirement system; investments; default of principal or interest; trustees; powers and duties.**

Prior to January 1, 2017, in the event of default in the payment of principal of, or interest on, the investments made, the board of trustees are authorized to institute the proper proceedings to collect such matured principal or interest, and may, with approval of the board of education or Class V Retirement System Board, accept for exchange purposes, refunding bonds or other evidences of

indebtedness with interest rates to be agreed upon with the obligor. Prior to January 1, 2017, the board of trustees, with the approval of the board of education or Class V Retirement System Board, are further authorized to make such compromises, adjustments, or disposition of the past-due interest or principal as are in default, or to make such compromises and adjustments as to future payments of interest or principal as deemed advisable for the purpose of protecting the investment.

**Source:** Laws 1967, c. 545, § 3, p. 1792; R.S.1943, (1994), § 79-1051.02; Laws 1996, LB 900, § 644; Laws 2006, LB 1024, § 69; Laws 2016, LB447, § 40.

**79-9,111 Employees retirement system; investments; board of trustees; powers and duties; state investment officer; powers and duties.**

The board of trustees shall invest the funds of the retirement system in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The board of trustees shall not purchase investments on margin or enter into any futures contract or other contract obligation which requires the payment of margin or enter into any similar contractual arrangement which may result in losses in excess of the amount paid or deposited with respect to such investment or contract, unless such transaction constitutes a hedging transaction or is incurred for the purpose of portfolio or risk management for the funds and investments of the system. Prior to January 1, 2017, the board of trustees may write covered call options or put options. Prior to January 1, 2017, the board of trustees shall establish written guidelines for any such option, purchase, or contract obligation. Any such option, purchase, or contract obligation shall be governed by the prudent investment rule stated in this section for investment of the funds of the system. The board of trustees may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are received as collateral. Prior to January 1, 2017, if shares of stock are purchased under this section, all proxies may be voted by the board of trustees prior to January 1, 2017. As of January 1, 2017, the funds of the retirement system shall be invested solely by the council and the state investment officer in accordance with the Nebraska State Funds Investment Act. The state investment officer may lend securities and vote proxies in accordance with the standard set forth in section 72-1246.

**Source:** Laws 1989, LB 237, § 6; R.S.1943, (1994), § 79-1051.07; Laws 1996, LB 900, § 646; Laws 1997, LB 624, § 26; Laws 2016, LB447, § 41.

**Cross References**

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

**79-9,113 Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.**

(1)(a) If, at any future time, a majority of the eligible members of the retirement system votes to be included under an agreement providing old age

and survivors insurance under the Social Security Act of the United States, the contributions to be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-999, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1995, all employees of the school district shall contribute an amount equal to the membership contribution which shall be six and three-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 2007, all employees of the school district shall contribute an amount equal to the membership contribution which shall be seven and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2009, all employees of the school district shall contribute an amount equal to the membership contribution which shall be eight and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2011, all employees of the school district shall contribute an amount equal to the membership contribution which shall be nine and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2013, all employees of the school district shall contribute an amount equal to the membership contribution which shall be nine and seventy-eight hundredths percent of the compensation paid in each fiscal year.

(b) The contributions by the school district in any fiscal year beginning on or after September 1, 1999, shall be the greater of (i) one hundred percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board of education upon recommendation of the actuary and the board of trustees.

(c) The contributions by the school district in any fiscal year beginning on or after September 1, 2007, and prior to September 1, 2018, shall be the greater of (i) one hundred one percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board of education upon recommendation of the actuary retained by the board of trustees and after considering any amounts that will be, or are expected to be, transferred to the system pursuant to subdivision (1)(b) of section 79-966. The amount necessary to maintain the solvency of the system as determined in subdivision (ii) of this subdivision (c) shall be transmitted by the school district to the account of the retirement system no later than August 31, 2018. The school district contributions specified in subdivision (i) of this subdivision (c) shall be made monthly and shall be immediately transmitted to the account of the retirement system.

(d) The contributions by the school district in any fiscal year beginning on or after September 1, 2018, and each September 1 thereafter, shall be the greater of (i) one hundred one percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board of education upon recommendation of the actuary retained by the board of trustees and after considering any amounts that will be, or are expected to be, transferred to the system pursuant to subdivision (1)(b) of section 79-966. The amount necessary to maintain the solvency of the system as determined in subdivision (ii) of this subdivision (d) shall be transmitted by the school district to the account of the retirement system no later than August 31, 2019, and each August 31 thereafter. The school district contributions specified in subdivision (i) of this subdivision (d) shall be made monthly and shall be immediately transmitted to the account of the retirement system.

(e) Nothing in this section prohibits the school district from making other contributions in addition to the contributions required pursuant to this section.

(f) The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section and shall be immediately transmitted to the account of the retirement system. Every employee who is a member of the system shall be deemed to consent and agree to such deductions and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment except as to benefits provided under the Class V School Employees Retirement Act.

(g) After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages

covered by old age and survivors insurance and one and sixty-five hundredths percent of salary or wages above that amount for service performed after September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year, and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, not to become members of the system shall not be less than they would have been had they remained under any preexisting system to date of retirement.

(h) Members of this system having the service qualifications of members of the School Employees Retirement System of the State of Nebraska, as provided by section 79-926, who are members of the retirement system established pursuant to the Class V School Employees Retirement Act prior to July 1, 2016, shall receive the state service annuity provided by sections 79-933 to 79-935 and 79-951.

(2) The school district shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Beginning September 1, 1995, the school district shall also pick up any contributions required by sections 79-990, 79-991, and 79-992 which are made under an irrevocable payroll deduction authorization between the member and the school district, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal and state income taxes based upon these contributions until the Internal Revenue Service rules that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the system. Employee contributions picked up shall be treated for all purposes of the Class V School Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

**Source:** Laws 1951, c. 274, § 25, p. 923; Laws 1953, c. 308, § 4, p. 1029; Laws 1955, c. 321, § 3, p. 993; Laws 1963, c. 490, § 5, p. 1567;



Laws 1969, c. 724, § 2, p. 2755; Laws 1972, LB 1116, § 3; Laws 1976, LB 994, § 3; Laws 1982, LB 131, § 12; Laws 1983, LB 488, § 1; Laws 1984, LB 218, § 3; Laws 1989, LB 237, § 7; Laws 1995, LB 505, § 8; Laws 1995, LB 574, § 77; R.S.Supp.,1995, § 79-1056; Laws 1996, LB 900, § 648; Laws 1997, LB 623, § 33; Laws 1998, LB 497, § 26; Laws 1998, LB 1191, § 63; Laws 2000, LB 155, § 5; Laws 2007, LB596, § 3; Laws 2009, LB187, § 3; Laws 2011, LB382, § 4; Laws 2011, LB509, § 35; Laws 2013, LB553, § 14; Laws 2016, LB447, § 42; Laws 2018, LB1005, § 32.

Operative date April 24, 2018.

#### Cross References

For provisions of federal Social Security Act, see Chapter 68, article 6.

### **79-9,115 Employees retirement system; Class V School Employees Retirement Fund; created; use; expenses; payment.**

(1) All allowances, annuities, or other benefits granted under the Class V School Employees Retirement Act, and all expenses incurred in connection with the administration of the act, except clerical work incurred in connection with maintenance of records and payment of benefits, shall be paid from the Class V School Employees Retirement Fund which is hereby established. Such clerical work shall be performed by employees of the school district or districts. The administrator and staff of the retirement system shall be permitted reasonable office and records storage space in the central office building of the Class V school district formed before September 13, 1997. All expenses for the retirement system office accommodations and integrated pension benefit information management systems, including all services, support, furniture, and equipment provided to or by any central office department of the school district, shall be charged to the retirement system. The school district or districts shall not be liable for acts or omissions in the administration of the act made at the direction of the board of trustees or its employees.

(2) Beginning on August 24, 2017, 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. Such expenses shall be paid without the approval of the board of trustees.

**Source:** Laws 1951, c. 274, § 27, p. 925; R.S.1943, (1994), § 79-1058; Laws 1996, LB 900, § 650; Laws 1998, LB 497, § 27; Laws 2006, LB 1024, § 70; Laws 2016, LB447, § 43; Laws 2017, LB29, § 2.

### **79-9,117 Board of trustees; establish preretirement planning program; for whom; required information; funding; attendance; fee.**

(1) The board of trustees shall establish a comprehensive preretirement planning program for school employees who are members of the retirement system. The program shall provide information and advice regarding the many changes employees face upon retirement, including, but not limited to, changes in physical and mental health, housing, family life, leisure activity, and retirement income.

(2) The preretirement planning program shall be available to all employees who have attained the age of fifty years or are within five years of qualifying for retirement or early retirement under their retirement systems.

(3) The preretirement planning program shall include information on the federal and state income tax consequences of the various annuity or retirement benefit options available to the employee, information on social security benefits, information on various local, state, and federal government programs and programs in the private sector designed to assist elderly persons, and information and advice the board of trustees deems valuable in assisting employees in the transition from public employment to retirement.

(4) The board of trustees shall work with any governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the preretirement planning program.

(5) The costs of the preretirement planning program shall be charged back to the retirement system.

(6) The employer shall provide each eligible employee leave with pay to attend up to two preretirement planning programs. For purposes of this subsection, leave with pay means a day off paid by the employer and does not mean vacation, sick, personal, or compensatory time. An employee may choose to attend a program more than twice, but such leave shall be at the expense of the employee and shall be at the discretion of the employer. An eligible employee shall not be entitled to attend more than one preretirement planning program per fiscal year prior to actual election of retirement.

(7) A nominal registration fee may be charged each person attending a preretirement planning program to cover the costs for meals, meeting rooms, or other expenses incurred under such program.

**Source:** Laws 2011, LB509, § 36; Laws 2013, LB263, § 28; Laws 2016, LB447, § 44.

## ARTICLE 10

### SCHOOL TAXATION, FINANCE, AND FACILITIES

#### (a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

##### Section

79-1001.	Act, how cited.
79-1003.	Terms, defined.
79-1003.01.	Summer school allowance; summer school student units; calculations.
79-1004.	Repealed. Laws 2017, LB512, § 41.
79-1005.	Community achievement plan aid; new community achievement plan adjustment; calculation.
79-1005.01.	Tax Commissioner; certify data; department; calculate allocation percentage and local system's allocated income tax funds.
79-1007.06.	Poverty allowance; calculation.
79-1007.07.	Financial reports relating to poverty allowance; department; duties; powers.
79-1007.08.	Limited English proficiency allowance; calculation.
79-1007.09.	Financial reports relating to limited English proficiency; department; duties; powers.
79-1007.11.	School district formula need; calculation.
79-1007.13.	Special receipts allowance; calculation.
79-1007.18.	Averaging adjustment; calculation.
79-1007.22.	Repealed. Laws 2016, LB1067, § 70.
79-1008.01.	Equalization aid; amount.
79-1008.02.	Minimum levy adjustment; calculation; effect.

## SCHOOL TAXATION, FINANCE, AND FACILITIES

### Section

- 79-1009. Option school districts; net option funding; calculation.
- 79-1011. Repealed. Laws 2016, LB1066, § 25.
- 79-1012. Repealed. Laws 2016, LB1066, § 25.
- 79-1013. Repealed. Laws 2018, LB1081, § 28.
- 79-1014. Repealed. Laws 2018, LB1081, § 28.
- 79-1015.01. Local system formula resources; local effort rate yield; determination.
- 79-1016. Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.
- 79-1017.01. Local system formula resources; amounts included.
- 79-1018.01. Local system formula resources; other actual receipts included.
- 79-1022. Distribution of income tax receipts and state aid; effect on budget.
- 79-1022.02. School fiscal year 2017-18 certifications null and void.
- 79-1023. School district; general fund budget of expenditures; limitation; department; certification.
- 79-1024. Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect.
- 79-1027. Budget; restrictions.
- 79-1027.01. Repealed. Laws 2018, LB377, § 87.
- 79-1028.01. School fiscal years; district may exceed certain limits; situations enumerated; state board; duties.
- 79-1028.02. Repealed. Laws 2016, LB1066, § 25.
- 79-1028.04. Repealed. Laws 2016, LB1066, § 25.
- 79-1029. Budget authority for general fund budget of expenditures; vote to exceed; procedure.
- 79-1030. Unused budget authority for general fund budget of expenditures; carried forward; limitation.
- 79-1031.01. Appropriations Committee; duties.
- 79-1033. State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments.

### (b) SCHOOL FUNDS

- 79-1035. School funds; apportionment by Commissioner of Education; basis.
- 79-1036. School funds; public lands; amount in lieu of tax; reappraisal; appeal.
- 79-1041. County treasurer; distribute school funds; when.
- 79-1045. Forest reserve funds; apportionment; how made.
- 79-1054. State Board of Education; establish innovation grant program; application; contents; department; duties; report; Department of Education Innovative Grant Fund; created; use; investment.
- 79-1065. Financial support to school districts; adjustments authorized; records.
- 79-1065.01. Financial support to school districts; lump-sum payments.
- 79-1065.02. State aid payments; adjustments; application; calculation.
- 79-1072. School district; contingency fund; authorized; use.

### (c) SCHOOL TAXATION

- 79-1073. General fund property tax receipts; learning community coordinating council; certification; division; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.
- 79-1073.01. Repealed. Laws 2016, LB1067, § 70.
- 79-1075. Joint district or learning community; joint affiliated school system; tax levy; certification.
- 79-1077. Repealed. Laws 2018, LB377, § 87.
- 79-1078. Repealed. Laws 2018, LB377, § 87.

### (d) SCHOOL BUDGETS AND ACCOUNTING

- 79-1083. School tax; adopted budget statement; delivery; to whom.
- 79-1083.02. Repealed. Laws 2018, LB377, § 87.
- 79-1084. Class III school district; school board; budget; tax; levy; publication of expenditures; violation; penalty; duty of county board.
- 79-1086. Class V school district; board of education; budget; how prepared; certification of levy; levy of taxes.

## SCHOOLS

### Section

- 79-1089. Audit by public accountant or certified public accountant; report; failure to comply; effect.  
79-1090. Failure to approve budget; superintendent; duties.

#### (e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

- 79-1098. Schoolhouse; erection or improvement; equipment; special tax.  
79-1099. Repealed. Laws 2018, LB377, § 87.  
79-10,100. Schoolhouse; erection or improvement; equipment; vote required to approve.  
79-10,101. Schoolhouse; erection or improvement; equipment; tax fund; transfer; limitation upon use; investment.  
79-10,103. Real property; lease or acquisition; located outside of district; purpose; election; when.  
79-10,107. School district property; use; lease authorized.  
79-10,110. Health and safety modifications prior to April 19, 2016, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose; school board; powers and duties; hearing; tax levy authorized; issuance of bonds authorized.  
79-10,110.01. Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose bonds; refunding bonds; authorized; conditions.  
79-10,110.02. Health and safety modifications on and after April 19, 2016; school board; powers and duties; tax levy authorized; issuance of bonds authorized.  
79-10,111. Repealed. Laws 2018, LB377, § 87.  
79-10,113. Repealed. Laws 2018, LB377, § 87.  
79-10,114. Class III or IV school district; property; sale; proceeds of sale; use.  
79-10,117. Class III school district; teacherage; site; purchase or lease; powers of voters at election or annual or special meeting; tax.  
79-10,118. Class III school district; teacherage; tax; election.  
79-10,120. School district; board of education; special fund for sites and buildings; levy of taxes.  
79-10,121. Repealed. Laws 2018, LB377, § 87.  
79-10,122. Repealed. Laws 2018, LB377, § 87.  
79-10,123. Repealed. Laws 2018, LB377, § 87.  
79-10,124. Repealed. Laws 2018, LB377, § 87.  
79-10,125. Repealed. Laws 2018, LB377, § 87.  
79-10,126. Class V school district; school fiscal year 2017-18 and thereafter; school tax; additional levy; funds established.  
79-10,126.01. Class V school district; school fiscal years prior to school fiscal year 2017-18; school tax; additional levy; funds established.

#### (g) SUMMER FOOD SERVICE PROGRAM

- 79-10,141. Summer Food Service Program; legislative intent; department; duties; preference for grants; applications.

#### (h) FREE OR REDUCED-PRICE MEALS

- 79-10,143. Parent or guardian; provide information regarding qualification; school district; duties.

#### (i) STATE DEPARTMENT OF EDUCATION DUTIES

- 79-10,144. Community eligibility provision; state aid and federal funds; State Department of Education; duties.

#### (j) LEARNING COMMUNITY TRANSITION AID

- 79-10,145. Learning community transition aid; calculation.

#### (k) SWIMMING POOL

- 79-10,146. Swimming pool; personnel.

## (a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

**79-1001 Act, how cited.**

Sections 79-1001 to 79-1033 shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

**Source:** Laws 1990, LB 1059, § 1; Laws 1995, LB 542, § 1; Laws 1995, LB 840, § 3; R.S.Supp.,1995, § 79-3801; Laws 1996, LB 900, § 652; Laws 1996, LB 1050, § 10; Laws 1997, LB 806, § 29; Laws 1998, LB 1134, § 1; Laws 1998, LB 1219, § 13; Laws 1999, LB 149, § 1; Laws 2001, LB 833, § 3; Laws 2002, LB 898, § 2; Laws 2004, LB 1091, § 8; Laws 2006, LB 1024, § 71; Laws 2007, LB641, § 12; Laws 2008, LB988, § 8; Laws 2009, LB545, § 3; Laws 2009, First Spec. Sess., LB5, § 2; Laws 2011, LB18, § 1; Laws 2011, LB235, § 4; Laws 2015, LB519, § 10; Laws 2016, LB1067, § 31.

**79-1003 Terms, defined.**

For purposes of the Tax Equity and Educational Opportunities Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years 2013-14 through 2015-16, the difference of the general fund operating expenditures as calculated pursuant to subdivision (23) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance, (b) for school fiscal years 2016-17 through 2018-19, the difference of the general fund operating expenditures as calculated pursuant to subdivision (23) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, and focus school and program allowance, and (c) for school fiscal year 2019-20 and each school fiscal year thereafter, the difference of the general fund operating expenditures as calculated pursuant to subdivision (23) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, community achievement plan allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 as adjusted, for school fiscal years prior to school fiscal year 2017-18, by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(5) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(6) Board means the school board of each school district;

(7) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund;

(8) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(9) Converted contract means an expired contract that was in effect for at least fifteen school years beginning prior to school year 2012-13 for the education of students in a nonresident district in exchange for tuition from the resident district when the expiration of such contract results in the nonresident district educating students, who would have been covered by the contract if the contract were still in effect, as option students pursuant to the enrollment option program established in section 79-234;

(10) Converted contract option student means a student who will be an option student pursuant to the enrollment option program established in section 79-234 for the school fiscal year for which aid is being calculated and who would have been covered by a converted contract if the contract were still in effect and such school fiscal year is the first school fiscal year for which such contract is not in effect;

(11) Department means the State Department of Education;

(12) District means any school district or unified system as defined in section 79-4,108;

(13) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(14) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23, 79-1007.25, 79-1008.01 to 79-1022, and 79-1022.02;

(15) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(16) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(17) Formula students means:

(a) For state aid certified pursuant to section 79-1022, the sum of the product of fall membership from the school fiscal year immediately preceding the

school fiscal year in which the aid is to be paid multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and the prior two school fiscal years plus sixty percent of the qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which aid is to be paid minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the fall membership multiplied by 0.5; and

(b) For the final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus sixty percent of the qualified early childhood education average daily membership plus tuitioned students minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the average daily membership multiplied by 0.5 from the school fiscal year immediately preceding the school fiscal year in which aid was paid;

(18) Free lunch and free milk calculated students means, using the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, (a) for schools that did not provide free meals to all students pursuant to the community eligibility provision, students who individually qualified for free lunches or free milk pursuant to the federal Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq., and the federal Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq., as such acts and sections existed on January 1, 2015, and rules and regulations adopted thereunder, plus (b) for schools that provided free meals to all students pursuant to the community eligibility provision, (i) for school fiscal year 2016-17, the product of the students who attended such school multiplied by the identified student percentage calculated pursuant to such federal provision or (ii) for school fiscal year 2017-18 and each school fiscal year thereafter, the greater of the number of students in such school who individually qualified for free lunch or free milk using the most recent school fiscal year for which the school did not provide free meals to all students pursuant to the community eligibility provision or one hundred ten percent of the product of the students who qualified for free meals at such school pursuant to the community eligibility provision multiplied by the identified student percentage calculated pursuant to such federal provision, except that the free lunch and free milk students calculated for any school pursuant to subdivision (18)(b)(ii) of this section shall not exceed one hundred percent of the students qualified for free meals at such school pursuant to the community eligibility provision;

(19) Free lunch and free milk student means, for school fiscal years prior to school fiscal year 2016-17, a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(20) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(21) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023, the general fund budget of expenditures does not include any special grant funds, exclusive of local matching funds, received by a district;

(22) General fund expenditures means all expenditures from the general fund;

(23) General fund operating expenditures means for state aid calculated for school fiscal years 2012-13 and each school fiscal year thereafter, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (a) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (b) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (c) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (d) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (e)(i) for state aid calculated for school fiscal years prior to school fiscal year 2018-19, expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year, or, to the extent that a district has demonstrated to the State Board of Education pursuant to section 79-1028.01 that the agreement will result in a net savings in salary and benefit costs to the school district over a five-year period, occurring on or after the first day of the 2013-14 school year or (ii) for state aid calculated for school fiscal year 2018-19 and each school fiscal year thereafter, expenditures to pay for incentives agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment for which the State Board of Education approved an exclusion pursuant to subdivision (1)(h), (i), (j), or (k) of section 79-1028.01, (f)(i) expenditures to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (ii) expenditures to pay for school district contributions pursuant to subdivision (1)(c)(i) or (1)(d)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent, and (g) any amounts paid by the district for lobbyist fees and expenses reported to the Clerk of the Legislature pursuant to section 49-1483.

For purposes of this subdivision (23) of this section, receipts from levy override elections shall equal ninety-nine percent of the difference of the total general fund levy minus a levy of one dollar and five cents per one hundred dollars of taxable valuation multiplied by the assessed valuation for school



districts that have voted pursuant to section 77-3444 to override the maximum levy provided pursuant to section 77-3442;

(24) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(25) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(26) Limited English proficiency students means the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid plus the difference of such students with limited English proficiency minus the average number of limited English proficiency students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(27) Local system means a unified system or a school district;

(28) Low-income child means (a) for school fiscal years prior to 2016-17, a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated and (b) for school fiscal year 2016-17 and each school fiscal year thereafter, a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4), respectively, and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966, 42 U.S.C. 1772(a)(6) and 42 U.S.C. 1773(e)(1)(A), respectively, as such acts and sections existed on January 1, 2015, for a household of that size that would have allowed the child to meet the income qualifications for free meals during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(29) Low-income students means the number of low-income children within the district multiplied by the ratio of the formula students in the district divided by the total children under nineteen years of age residing in the district as derived from income tax information;

(30) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(31) Poverty students means (a) for school fiscal years prior to 2016-17, the number of low-income students or the number of students who are free lunch and free milk students in a district plus the difference of the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, minus the average number of poverty students for such district, prior to such addition, for the three immedi-

ately preceding school fiscal years if such difference is greater than zero and (b) for school fiscal year 2016-17 and each school fiscal year thereafter, the unadjusted poverty students plus the difference of such unadjusted poverty students minus the average number of poverty students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(32) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(33) Qualified early childhood education fall membership means the product of membership on October 1 of each school year of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(34) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(35) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(36) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(37) Sparse local system means a local system that is not a very sparse local system but which meets the following criteria:

(a)(i) Less than two students per square mile in the county in which each high school is located, based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(c)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than two hundred seventy-five square miles in the local system; or

(d)(i) Less than two formula students per square mile in the local system and (ii) the local system includes an area equal to ninety-five percent or more of the square miles in the largest county in which a high school attendance center is located in the local system;

(38) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(39) Special grant funds means the budgeted receipts for grants, including, but not limited to, categorical funds, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(40) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(41) State board means the State Board of Education;

(42) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(43) Statewide average basic funding per formula student means the statewide total basic funding for all districts divided by the statewide total formula students for all districts;

(44) Statewide average general fund operating expenditures per formula student means the statewide total general fund operating expenditures for all districts divided by the statewide total formula students for all districts;

(45) Teacher has the definition found in section 79-101;

(46) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(47) Tuition receipts from converted contracts means tuition receipts received by a district from another district in the most recently available complete data year pursuant to a converted contract prior to the expiration of the contract;

(48) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency;

(49) Unadjusted poverty students means, for school fiscal year 2016-17 and each school fiscal year thereafter, the greater of the number of low-income students or the free lunch and free milk calculated students in a district; and

(50) Very sparse local system means a local system that has:

(a)(i) Less than one-half student per square mile in each county in which each high school attendance center is located based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads; or

(b)(i) More than four hundred fifty square miles in the local system, (ii) less than one-half student per square mile in the local system, and (iii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads.

**Source:** Laws 1990, LB 1059, § 3; Laws 1991, LB 511, § 71; Laws 1992, LB 245, § 76; Laws 1994, LB 1290, § 3; Laws 1995, LB 840, § 4; R.S.Supp.,1995, § 79-3803; Laws 1996, LB 900, § 654; Laws 1996, LB 1050, § 12; Laws 1997, LB 347, § 29; Laws 1997, LB 710, § 5; Laws 1997, LB 713, § 1; Laws 1997, LB 806, § 31; Laws 1998, LB 306, § 42; Laws 1998, LB 1134, § 2; Laws 1998, LB 1219, § 15; Laws 1998, LB 1229, § 3; Laws 1998, Spec. Sess., LB 1, § 15; Laws 1999, LB 149, § 3; Laws 1999, LB 813, § 19; Laws 2001, LB 313, § 1; Laws 2001, LB 797, § 18; Laws 2001, LB 833, § 4; Laws 2002, LB 898, § 3; Laws 2005, LB 126, § 45; Laws 2005, LB 577, § 1; Laws 2006, LB 1024, § 73; Laws 2006, LB 1208, § 4; Referendum 2006, No. 422; Laws 2007, LB641, § 13; Laws 2008, LB988, § 9; Laws 2009, LB545, § 4; Laws 2009, LB549, § 26; Laws 2009, First Spec. Sess., LB5, § 3; Laws 2010, LB1071, § 12; Laws 2011, LB18, § 2; Laws 2011, LB235, § 5; Laws 2011, LB382, § 5; Laws 2011, LB509, § 38; Laws 2013, LB407, § 2; Laws 2013, LB553, § 15; Laws 2014, LB967, § 11; Laws 2015, LB519, § 12; Laws 2015, LB525, § 17; Laws 2016, LB959, § 2; Laws 2016, LB1066, § 16; Laws 2016, LB1067, § 32; Laws 2017, LB512, § 12; Laws 2018, LB377, § 62; Laws 2018, LB1005, § 33; Laws 2018, LB1081, § 11.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB377, section 62, with LB1005, section 33, and LB1081, section 11, to reflect all amendments.

**Note:** Changes made by LB1005 became operative April 24, 2018. Changes made by LB1081 became effective July 19, 2018. Changes made by LB377 became operative January 1, 2019.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

**Nebraska Budget Act**, see section 13-501.

**Nebraska Revenue Act of 1967**, see section 77-2701.

### 79-1003.01 Summer school allowance; summer school student units; calculations.

(1) The department shall calculate a summer school allowance for each district which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. For aid calculated for school fiscal years through school fiscal year 2013-14, the summer school allowance shall be equal to two and one-half percent of the summer school student units for such district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student. For aid calculated for school fiscal year 2014-15 and each school fiscal year thereafter, the summer school allowance shall be equal to the lesser of two and one-half percent of the product of the summer school student units for such

district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student or the summer school and early childhood summer school expenditures that are paid for with noncategorical funds generated by state or local taxes as reported on the annual financial report for the most recently available data year and that are not included in other allowances.

(2) Summer school student units shall be calculated for each student enrolled in summer school as defined in section 79-536 in a school district who attends such summer school for at least twelve days in the most recently available complete data year, whether or not the student is in the membership of the school district. The initial number of units for each such student shall equal the sum of the ratios, each rounded down to the nearest whole number, of the number of days for which the student attended summer school classes in such district for at least three hours and less than six hours per day divided by twelve days and of two times the number of days for which the student attended summer school classes in such district for six or more hours per day divided by twelve days.

(3) Each school district shall receive an additional summer school student unit for each summer school student unit attributed to remedial math or reading programs. Each school district shall also receive an additional summer school student unit for each summer school student unit attributed to a student who in the school year immediately preceding summer school either (a) qualified for free lunches or free milk and attended a school that uses information collected from parents and guardians to determine such qualifications or (b) attended a school that provides free meals to all students pursuant to the community eligibility provision.

(4) Beginning with state aid calculated for school fiscal year 2012-13, summer school student units shall be calculated for each student who was both enrolled in the most recently available complete data year in a summer session of an early childhood education program for which a qualified early childhood education fall membership greater than zero has been calculated for the school fiscal year for which aid is being calculated and eligible to attend kindergarten in the fall immediately following such summer session. The initial number of units for each such early childhood education student shall equal the sum of the ratios, each rounded down to the nearest whole number, of the number of days for which the student attended the summer session in such district for at least three hours and less than six hours per day divided by twelve days and of two times the number of days for which the student attended the summer session in such district for six or more hours per day divided by twelve days. The initial summer school student units for early childhood education students shall be multiplied by six-tenths. Instructional hours included in the calculation of the qualified early childhood education fall membership or the qualified early childhood education average daily membership shall not be included in the calculation of the summer school allowance.

(5) Each school district shall receive an additional six-tenths of a summer school student unit for each early childhood education student unit attributed to an early childhood education student who is either qualified for free lunches or free milk based on information collected from parents and guardians to determine such qualifications or is registered to attend a school in the school year immediately following such summer that provides free meals to all students pursuant to the community eligibility provision.

(6) This section does not prevent school districts from requiring and collecting fees for summer school or summer sessions of early childhood education programs, except that summer school student units shall not be calculated for school districts which collect fees for summer school from students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs or who attended, or are registered to attend, a school in the school year immediately following such summer that provides free meals to all students pursuant to the community eligibility provision.

**Source:** Laws 2007, LB641, § 14; Laws 2008, LB988, § 10; Laws 2010, LB1071, § 13; Laws 2011, LB235, § 6; Laws 2013, LB407, § 3; Laws 2015, LB525, § 18.

**79-1004 Repealed. Laws 2017, LB512, § 41.**

**79-1005 Community achievement plan aid; new community achievement plan adjustment; calculation.**

(1) For school fiscal year 2017-18 and each school fiscal year thereafter, the department shall determine the community achievement plan aid to be paid to each school district that will participate in a community achievement plan approved by the State Board of Education pursuant to section 79-2122 for such school fiscal year. For the first two school fiscal years a school district will participate in such plan, a new community achievement plan adjustment equal to the community achievement aid shall be included in the calculation of formula need for such school district. For all other school fiscal years, a community achievement plan allowance equal to the community achievement aid shall be included in the calculation of formula need for school districts qualifying for community achievement plan aid. Community achievement plan aid shall be included as a formula resource pursuant to section 79-1017.01.

(2) Community achievement plan aid shall equal 0.4643 percent of the product of the statewide average general fund operating expenditures per formula student multiplied by the total formula students for all of the member school districts in such learning community. The community achievement plan aid for each learning community shall be divided proportionally among the member school districts based on the sum of two percent of the poverty allowance calculated pursuant to section 79-1007.06, two percent of the limited English proficiency allowance calculated pursuant to section 79-1007.08, and, for school districts with poverty students greater than forty percent of the formula students, except as otherwise provided in this section, three percent of the product of the statewide average general fund operating expenditures per formula student multiplied by the difference of the poverty students minus forty percent of the formula students for such school district.

(3) For school fiscal year 2017-18, community achievement plan aid and a new community achievement plan adjustment shall be calculated for school districts that are members of a learning community and shall be included in formula resources pursuant to section 79-1017.01 in such amount regardless of the status of the approval of a community achievement plan, but community achievement plan aid shall not be paid to such school districts until a community achievement plan for such learning community is approved by the state board. If a community achievement plan is not approved for such learning community prior to September 1, 2017, the adjustment and aid calculated pursuant to this section shall be removed for the final calculation of state aid

pursuant to section 79-1065 for school fiscal year 2017-18 and such amount shall be subtracted from the state aid appropriated by the Legislature for the determination of the local effort rate pursuant to section 79-1015.01 for the final calculation of state aid for school fiscal year 2017-18.

**Source:** Laws 2016, LB1067, § 33.

**79-1005.01 Tax Commissioner; certify data; department; calculate allocation percentage and local system's allocated income tax funds.**

(1) Not later than November 15 of each year, the Tax Commissioner shall certify to the department for the preceding tax year the income tax liability of resident individuals for each local system.

(2) For school fiscal years prior to 2017-18, one hundred two million two hundred eighty-nine thousand eight hundred seventeen dollars which is equal to the amount appropriated to the School District Income Tax Fund for distribution in school fiscal year 1992-93 shall be disbursed as option payments as determined under section 79-1009 and as allocated income tax funds as determined in this section and sections 79-1008.01, 79-1015.01, 79-1017.01, and 79-1018.01, except as provided in section 79-1008.02 for school fiscal years prior to school fiscal year 2017-18. For school fiscal years prior to school fiscal year 2017-18, funds not distributed as allocated income tax funds due to minimum levy adjustments shall not increase the amount available to local systems for distribution as allocated income tax funds.

(3) Using the data certified by the Tax Commissioner pursuant to subsection (1) of this section, the department shall calculate the allocation percentage and each local system's allocated income tax funds. The allocation percentage shall be the amount stated in subsection (2) of this section minus the total amount paid for option students pursuant to section 79-1009, with the difference divided by the aggregate statewide income tax liability of all resident individuals certified pursuant to subsection (1) of this section. Each local system's allocated income tax funds shall be calculated by multiplying the allocation percentage times the local system's income tax liability certified pursuant to subsection (1) of this section.

(4) For school fiscal year 2017-18 and each school fiscal year thereafter, each local system's allocated income tax funds shall be calculated by multiplying the local system's income tax liability certified pursuant to subsection (1) of this section by two and twenty-three hundredths percent.

**Source:** Laws 1997, LB 806, § 33; Laws 1998, Spec. Sess., LB 1, § 16; Laws 1999, LB 149, § 4; Laws 2002, LB 898, § 4; Laws 2004, LB 1093, § 2; Laws 2008, LB988, § 11; Laws 2009, First Spec. Sess., LB5, § 4; Laws 2011, LB235, § 7; Laws 2016, LB959, § 3; Laws 2016, LB1066, § 17; Laws 2016, LB1067, § 34.

**79-1007.06 Poverty allowance; calculation.**

(1) For each school fiscal year, the department shall determine the poverty allowance for each school district that meets the requirements of this section and section 79-1007.07. Each school district shall designate a maximum poverty allowance on a form prescribed by the department on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the poverty allowance by providing the department with a maximum poverty

allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(2) The poverty allowance for each school district shall equal the lesser of:

(a) The maximum amount designated pursuant to subsection (1) of this section by the school district in the local system, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The sum of:

(i) The statewide average general fund operating expenditures per formula student multiplied by 0.0375 then multiplied by the poverty students comprising more than five percent and not more than ten percent of the formula students in the school district; plus

(ii) The statewide average general fund operating expenditures per formula student multiplied by 0.0750 then multiplied by the poverty students comprising more than ten percent and not more than fifteen percent of the formula students in the school district; plus

(iii) The statewide average general fund operating expenditures per formula student multiplied by 0.1125 then multiplied by the poverty students comprising more than fifteen percent and not more than twenty percent of the formula students in the school district; plus

(iv) The statewide average general fund operating expenditures per formula student multiplied by 0.1500 then multiplied by the poverty students comprising more than twenty percent and not more than twenty-five percent of the formula students in the school district; plus

(v) The statewide average general fund operating expenditures per formula student multiplied by 0.1875 then multiplied by the poverty students comprising more than twenty-five percent and not more than thirty percent of the formula students in the school district; plus

(vi) The statewide average general fund operating expenditures per formula student multiplied by 0.2250 then multiplied by the poverty students comprising more than thirty percent of the formula students in the school district.

**Source:** Laws 2006, LB 1024, § 79; Laws 2007, LB641, § 19; Laws 2008, LB988, § 28; Laws 2009, LB549, § 27; Laws 2015, LB525, § 19; Laws 2018, LB1081, § 12.  
Effective date July 19, 2018.

**79-1007.07 Financial reports relating to poverty allowance; department; duties; powers.**

(1)(a) The annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the poverty allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on poverty as defined by the federal program providing the funds; and

(iii) The expenditures and sources of funding for each program related to poverty, the method used to allocate money to the program and within the



program, and the expenditures and sources of funding for support costs directly attributable to poverty.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(2) The department shall determine the poverty allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would include in the poverty allowance expenditures only those expenditures that are not included in other allowances, that were used to specifically address issues related to the education of students living in poverty, that do not replace expenditures that would have occurred if the students involved in the program did not live in poverty, and that are paid for with noncategorical funds generated by state or local taxes.

(3) If the poverty allowance expenditures do not equal 117.65 percent or more of the poverty allowance for the most recently available complete data year, the department shall calculate a poverty allowance correction. The poverty allowance correction shall equal the poverty allowance minus eighty-five percent of the poverty allowance expenditures.

(4) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

**Source:** Laws 2006, LB 1024, § 80; Laws 2007, LB641, § 20; Laws 2008, LB988, § 29; Laws 2009, LB545, § 5; Laws 2011, LB18, § 3; Laws 2012, LB782, § 158; Laws 2013, LB407, § 4; Laws 2015, LB525, § 20; Laws 2018, LB1081, § 13.  
Effective date July 19, 2018.

### **79-1007.08 Limited English proficiency allowance; calculation.**

(1) For each school fiscal year, the department shall determine the limited English proficiency allowance for each school district that meets the requirements of this section. Each school district shall designate a maximum limited English proficiency allowance on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the limited English proficiency allowance by providing the department with a maximum limited English proficiency allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(2) The limited English proficiency allowance for each school district that has not been disqualified pursuant to section 79-1007.09 shall equal the lesser of:

(a) The amount designated pursuant to subsection (1) of this section by the school district, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The statewide average general fund operating expenditures per formula student multiplied by 0.25 then multiplied by:

(i) The number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, if such number is greater than or equal to twelve;

(ii) Twelve, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is greater than or equal to one and less than twelve; or

(iii) Zero, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is less than one.

**Source:** Laws 2006, LB 1024, § 81; Laws 2007, LB641, § 21; Laws 2008, LB988, § 30; Laws 2009, LB549, § 28; Laws 2018, LB1081, § 14.

Effective date July 19, 2018.

**79-1007.09 Financial reports relating to limited English proficiency; department; duties; powers.**

(1)(a) The annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the limited English proficiency allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds; and

(iii) The expenditures and sources of funding for each program related to limited English proficiency, the method used to allocate money to the program and within the program, and the expenditures and sources of funding for support costs directly attributable to limited English proficiency.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(2) The department shall determine the limited English proficiency allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would only include in the limited English proficiency allowance expenditures those expenditures that are not included in other allowances, that were used to specifically address issues related to the education of students with limited English proficiency, that do not replace expenditures that would have occurred if the students involved in the program did not have limited English proficiency, and that are paid for with noncategorical funds generated by state or local taxes.

(3) If the limited English proficiency allowance expenditures do not equal 117.65 percent or more of the limited English proficiency allowance for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction. The limited English proficiency allowance correction shall equal the limited English proficiency allowance minus eighty-five percent of the limited English proficiency allowance expenditures. If the limited English proficiency allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(4) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

**Source:** Laws 2006, LB 1024, § 82; Laws 2007, LB641, § 22; Laws 2008, LB988, § 31; Laws 2009, LB545, § 6; Laws 2011, LB18, § 4; Laws 2013, LB407, § 5; Laws 2018, LB1081, § 15.  
Effective date July 19, 2018.

#### **79-1007.11 School district formula need; calculation.**

(1) Except as otherwise provided in this section, for school fiscal years 2013-14 through 2015-16, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, teacher education allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(2) Except as otherwise provided in this section, for school fiscal year 2016-17, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(3) Except as otherwise provided in this section, for school fiscal years 2017-18 and 2018-19, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, poverty allowance adjustment, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, distance education and telecommunications allowance, averaging adjustment, new community achievement plan adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(4) Except as otherwise provided in this section, for school fiscal year 2019-20 and each school fiscal year thereafter, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and

program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, distance education and telecommunications allowance, community achievement plan allowance, averaging adjustment, new community achievement plan adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and any negative student growth adjustment correction.

(5) If the formula need calculated for a school district pursuant to subsections (1) through (4) of this section is less than one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(6) If the formula need calculated for a school district pursuant to subsections (1) through (4) of this section is more than one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, except that the formula need shall not be reduced pursuant to this subsection for any district receiving a student growth adjustment for the school fiscal year for which aid is being calculated.

(7) For purposes of subsections (5) and (6) of this section, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be the formula need used in the final calculation of aid pursuant to section 79-1065 and for districts that were affected by a reorganization with an effective date in the calendar year preceding the calendar year in which aid is certified for the school fiscal year for which aid is being calculated, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be attributed to the affected school districts based on information provided to the department by the school districts or proportionally based on the adjusted valuation transferred if sufficient information has not been provided to the department.

**Source:** Laws 2008, LB988, § 13; Laws 2008, LB1153, § 7; Laws 2009, LB545, § 8; Laws 2009, First Spec. Sess., LB5, § 5; Laws 2011, LB235, § 9; Laws 2013, LB407, § 6; Laws 2014, LB967, § 12; Laws 2015, LB519, § 13; Laws 2016, LB1067, § 35; Laws 2017, LB512, § 13.

### **79-1007.13 Special receipts allowance; calculation.**

The department shall calculate a special receipts allowance for each district equal to the amount of special education, state ward, and accelerated or differentiated curriculum program receipts included in local system formula resources under subdivisions (7), (8), (15), and (16) of section 79-1018.01 attributable to the school district.

**Source:** Laws 2008, LB988, § 15; Laws 2016, LB1067, § 36.

**79-1007.18 Averaging adjustment; calculation.**

(1) For school fiscal years prior to school fiscal year 2017-18:

(a) The department shall calculate an averaging adjustment for districts if the basic funding per formula student is less than the averaging adjustment threshold and the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated was at least one dollar per one hundred dollars of taxable valuation. For the calculation of aid for school fiscal years prior to school fiscal year 2018-19, the general fund levy for school districts that are members of a learning community for purposes of this section includes both the common general fund levy and the school district general fund levy authorized pursuant to subdivisions (2)(b) and (2)(c) of section 77-3442. The averaging adjustment shall equal the district's formula students multiplied by the percentage specified in this subsection for such district of the difference between the averaging adjustment threshold minus such district's basic funding per formula student;

(b) The averaging adjustment threshold shall equal the aggregate basic funding for all districts with nine hundred or more formula students divided by the aggregate formula students for all districts with nine hundred or more formula students for the school fiscal year for which aid is being calculated; and

(c) The percentage to be used in the calculation of an averaging adjustment shall be based on the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated and shall be as follows:

(i) If such levy was at least one dollar per one hundred dollars of taxable valuation but less than one dollar and one cent per one hundred dollars of taxable valuation, the percentage shall be fifty percent;

(ii) If such levy was at least one dollar and one cent per one hundred dollars of taxable valuation but less than one dollar and two cents per one hundred dollars of taxable valuation, the percentage shall be sixty percent;

(iii) If such levy was at least one dollar and two cents per one hundred dollars of taxable valuation but less than one dollar and three cents per one hundred dollars of taxable valuation, the percentage shall be seventy percent;

(iv) If such levy was at least one dollar and three cents per one hundred dollars of taxable valuation but less than one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be eighty percent; and

(v) If such levy was at least one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be ninety percent.

(2) For school fiscal year 2017-18 and each school fiscal year thereafter, the department shall calculate an averaging adjustment for districts with at least nine hundred formula students if the basic funding per formula student is less than the averaging adjustment threshold. The averaging adjustment shall equal the district's formula students multiplied by ninety percent of the difference of the averaging adjustment threshold minus such district's basic funding per formula student. The averaging adjustment threshold shall equal the aggregate basic funding for all districts with nine hundred or more formula students divided by the aggregate formula students for all districts with nine hundred or

more formula students for the school fiscal year for which aid is being calculated.

**Source:** Laws 2008, LB988, § 20; Laws 2009, LB545, § 9; Laws 2011, LB235, § 11; Laws 2013, LB407, § 8; Laws 2016, LB959, § 4; Laws 2016, LB1067, § 37.

### **79-1007.22 Repealed. Laws 2016, LB1067, § 70.**

#### **79-1008.01 Equalization aid; amount.**

Except as provided in section 79-1008.02 for school fiscal years prior to school fiscal year 2017-18 and section 79-1009, each local system shall receive equalization aid in the amount that the total formula need of each local system, as determined pursuant to sections 79-1007.04 to 79-1007.23 and 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

**Source:** Laws 1997, LB 710, § 11; Laws 1997, LB 806, § 38; Laws 1998, LB 989, § 7; Laws 1998, Spec. Sess., LB 1, § 19; Laws 1999, LB 149, § 6; Laws 2001, LB 797, § 20; Laws 2002, LB 898, § 8; Laws 2003, LB 540, § 4; Laws 2004, LB 1093, § 5; Laws 2006, LB 1024, § 84; Laws 2008, LB988, § 33; Laws 2009, First Spec. Sess., LB5, § 10; Laws 2011, LB8, § 2; Laws 2011, LB18, § 5; Laws 2011, LB235, § 12; Laws 2016, LB959, § 5.

#### **79-1008.02 Minimum levy adjustment; calculation; effect.**

For school fiscal years prior to school fiscal year 2017-18, a minimum levy adjustment shall be calculated and applied to any local system that has a general fund common levy for the fiscal year during which aid is certified that is less than the maximum levy, for such fiscal year for such local system, allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less five cents for learning communities for the calculation of aid for school fiscal years prior to school fiscal year 2018-19 and less ten cents for all other local systems. To calculate the minimum levy adjustment, the department shall subtract the local system general fund common levy for such fiscal year for such local system from the maximum levy allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less five cents for learning communities for the calculation of aid for school fiscal years prior to school fiscal year 2018-19 and less ten cents for all other local systems and multiply the result by the local system's adjusted valuation divided by one hundred. The minimum levy adjustment shall be added to the formula resources of the local system for the determination of equalization aid pursuant to section 79-1008.01. If the minimum levy adjustment is greater than or equal to the allocated income tax funds calculated pursuant to section 79-1005.01, the local system shall not receive allocated income tax funds. If the minimum levy adjustment is less than the allocated income tax funds calculated pursuant to section 79-1005.01, the local system shall receive allocated income tax funds in the amount of the difference between the allocated income tax funds calculated pursuant to section 79-1005.01 and the minimum levy adjustment.

**Source:** Laws 1997, LB 806, § 39; Laws 1998, Spec. Sess., LB 1, § 20; Laws 2001, LB 797, § 21; Laws 2002, LB 898, § 9; Laws 2006,

LB 1024, § 85; Laws 2007, LB641, § 26; Laws 2008, LB988, § 34; Laws 2011, LB235, § 13; Laws 2016, LB959, § 6; Laws 2016, LB1067, § 38.

**79-1009 Option school districts; net option funding; calculation.**

(1)(a) A district shall receive net option funding if (i) option students as defined in section 79-233 were actually enrolled in the school year immediately preceding the school year in which the aid is to be paid, (ii) option students as defined in such section will be enrolled in the school year in which the aid is to be paid as converted contract option students, or (iii) for the calculation of aid for school fiscal year 2017-18 for school districts that are members of a learning community, open enrollment students were actually enrolled for school year 2016-17 pursuant to section 79-2110.

(b) The determination of the net number of option students shall be based on (i) the number of students enrolled in the district as option students and the number of students residing in the district but enrolled in another district as option students as of the day of the fall membership count pursuant to section 79-528, for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, (ii) the number of option students that will be enrolled in the district or enrolled in another district as converted contract option students for the fiscal year in which the aid is to be paid, and (iii) for the calculation of aid for school fiscal year 2017-18 for school districts that are members of a learning community, the number of students enrolled in the district as open enrollment students and the number of students residing in the district but enrolled in another district as open enrollment students as of the day of the fall membership count pursuant to section 79-528 for school fiscal year 2016-17.

(c) Except as otherwise provided in this subsection, net number of option students means the difference of the number of option students enrolled in the district minus the number of students residing in the district but enrolled in another district as option students. For purposes of the calculation of aid for school fiscal year 2017-18 for school districts that are members of a learning community, net number of option students means the difference of the number of students residing in another school district who are option students or open enrollment students enrolled in the district minus the number of students residing in the district but enrolled in another district as option students or open enrollment students.

(2)(a) For all school fiscal years except school fiscal years 2017-18 and 2018-19, net option funding shall be the product of the net number of option students multiplied by the statewide average basic funding per formula student.

(b) For school fiscal years 2017-18 and 2018-19, net option funding shall be the product of the net number of option students multiplied by ninety-five and five-tenths percent of the statewide average basic funding per formula student.

(3) A district's net option funding shall be zero if the calculation produces a negative result.

Payments made under this section for school fiscal years prior to school fiscal year 2017-18 shall be made from the funds to be disbursed under section 79-1005.01.

Such payments shall go directly to the option school district but shall count as a formula resource for the local system.

**Source:** Laws 1996, LB 1050, § 18; Laws 1997, LB 806, § 40; Laws 1998, Spec. Sess., LB 1, § 21; Laws 1999, LB 813, § 21; Laws 2001, LB 797, § 22; Laws 2001, LB 833, § 5; Laws 2002, LB 898, § 10; Laws 2004, LB 1093, § 6; Laws 2008, LB988, § 35; Laws 2011, LB235, § 14; Laws 2016, LB1067, § 39; Laws 2017, LB409, § 2.

**79-1011 Repealed. Laws 2016, LB1066, § 25.**

**79-1012 Repealed. Laws 2016, LB1066, § 25.**

**79-1013 Repealed. Laws 2018, LB1081, § 28.**

**79-1014 Repealed. Laws 2018, LB1081, § 28.**

**79-1015.01 Local system formula resources; local effort rate yield; determination.**

(1) Local system formula resources shall include local effort rate yield which shall be computed as prescribed in this section.

(2) For each school fiscal year except school fiscal years 2017-18 and 2018-19: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less five cents; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

(3) For school fiscal years 2017-18 and 2018-19: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less two and ninety-seven hundredths cents; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

**Source:** Laws 1997, LB 806, § 45; Laws 1998, Spec. Sess., LB 1, § 23; Laws 1999, LB 149, § 8; Laws 2001, LB 797, § 24; Laws 2007, LB641, § 27; Laws 2008, LB988, § 38; Laws 2011, LB235, § 16; Laws 2013, LB407, § 11; Laws 2014, LB725, § 2; Laws 2017, LB409, § 3.



**79-1016 Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.**

(1) On or before August 20, the county assessor shall certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Tax Commissioner. The county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments shall be certified to the Property Tax Administrator on or before August 31.

(2) On or before October 10, the Property Tax Administrator shall compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (3) of this section. The Property Tax Administrator shall notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation shall be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by section 77-1327. The Tax Commissioner shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid purposes.

(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural land, ninety-six percent of actual value;

(b) For agricultural and horticultural land, seventy-two percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation pursuant to section 77-1344, seventy-two percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

(4) On or before November 10, any local system may file with the Tax Commissioner written objections to the adjusted valuations prepared by the Property Tax Administrator, stating the reasons why such adjusted valuations are not the valuations required by subsection (3) of this section. The Tax Commissioner shall fix a time for a hearing. Either party shall be permitted to introduce any evidence in reference thereto. On or before January 1, the Tax Commissioner shall enter a written order modifying or declining to modify, in whole or in part, the adjusted valuations and shall certify the order to the State Department of Education. Modification by the Tax Commissioner shall be based upon the evidence introduced at hearing and shall not be limited to the modification requested in the written objections or at hearing. A copy of the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Tax Commissioner may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

(5) On or before November 10, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to clerical error as defined in section 77-128 or, for agricultural and horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-1347.01. On or before the following January 1, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(6) On or before May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon the filing of the written request, the Tax Commissioner shall require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Tax Commissioner. The recertified valuation shall be the valuation that was certified on the tax list, pursuant to section 77-1613, increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(7) No injunction shall be granted restraining the distribution of state aid based upon the adjusted valuations pursuant to this section.

(8) A school district whose state aid is to be calculated pursuant to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such subsection may apply to the state board for lump-sum payment of such postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the entire amount applied for or any portion of such amount. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district.

**Source:** Laws 1990, LB 1059, § 9; Laws 1991, LB 829, § 32; Laws 1991, LB 511, § 76; Laws 1992, LB 245, § 81; Laws 1992, LB 719A, § 198; Laws 1994, LB 1290, § 7; Laws 1995, LB 490, § 185; R.S.Supp., 1995, § 79-3809; Laws 1996, LB 900, § 662; Laws 1996, LB 934, § 5; Laws 1996, LB 1050, § 24; Laws 1997, LB 270, § 103; Laws 1997, LB 271, § 53; Laws 1997, LB 342, § 4; Laws 1997, LB 595, § 6; Laws 1997, LB 713, § 3; Laws 1997, LB 806, § 46; Laws 1998, Spec. Sess., LB 1, § 24; Laws 1999, LB 194, § 34; Laws 1999, LB 813, § 22; Laws 2000, LB 968, § 80; Laws 2001, LB 170, § 28; Laws 2002, LB 994, § 30; Laws 2004, LB 973, § 66; Laws 2005, LB 126, § 46; Laws 2005, LB 263, § 16; Laws 2006, LB 808, § 46; Laws 2006, LB 968, § 16;

Referendum 2006, No. 422; Laws 2007, LB334, § 101; Laws 2008, LB988, § 39; Laws 2009, LB166, § 21; Laws 2017, LB217, § 31.

**Cross References**

Tax Equalization and Review Commission, see section 77-5003.

**79-1017.01 Local system formula resources; amounts included.**

(1) For state aid calculated for school fiscal years 2014-15 and 2015-16, local system formula resources includes other actual receipts determined pursuant to section 79-1018.01, net option funding determined pursuant to section 79-1009, teacher education aid determined pursuant to section 79-1007.25, instructional time aid determined pursuant to subsection (2) of section 79-1007.23, allocated income tax funds determined pursuant to section 79-1005.01, and minimum levy adjustments determined pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

(2) For state aid calculated for school fiscal year 2016-17 and each school fiscal year thereafter, local system formula resources includes other actual receipts determined pursuant to section 79-1018.01, net option funding determined pursuant to section 79-1009, allocated income tax funds determined pursuant to section 79-1005.01, community achievement plan aid determined pursuant to section 79-1005, and minimum levy adjustments determined pursuant to section 79-1008.02 for school fiscal years prior to school fiscal year 2017-18, and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

**Source:** Laws 1997, LB 806, § 48; Laws 2002, LB 898, § 11; Laws 2009, LB545, § 14; Laws 2011, LB235, § 17; Laws 2013, LB407, § 12; Laws 2014, LB967, § 17; Laws 2015, LB519, § 14; Laws 2016, LB959, § 7; Laws 2016, LB1067, § 40; Laws 2017, LB512, § 14.

**79-1018.01 Local system formula resources; other actual receipts included.**

Except as otherwise provided in this section, local system formula resources include other actual receipts available for the funding of general fund operating expenditures as determined by the department for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid. Other actual receipts include:

- (1) Public power district sales tax revenue;
- (2) Fines and license fees;

(3) Tuition receipts from individuals, other districts, or any other source except receipts derived from adult education, receipts derived from summer school tuition, receipts derived from early childhood education tuition, tuition receipts from converted contracts beginning with the calculation of state aid to be distributed in school fiscal year 2011-12, and receipts from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;

- (4) Transportation receipts;

- (5) Interest on investments;
- (6) Other miscellaneous noncategorical local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations;
- (7) Special education receipts;
- (8) Special education receipts and non-special education receipts from the state for wards of the court and wards of the state;
- (9) All receipts from the temporary school fund. Receipts from the temporary school fund shall only include (a) receipts pursuant to section 79-1035 and (b) the receipt of funds pursuant to section 79-1036 for property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202;
- (10) Motor vehicle tax receipts received;
- (11) Pro rata motor vehicle license fee receipts;
- (12) Other miscellaneous state receipts excluding revenue from the textbook loan program authorized by section 79-734;
- (13) Impact aid entitlements for the school fiscal year which have actually been received by the district to the extent allowed by federal law;
- (14) All other noncategorical federal receipts;
- (15) Receipts under the federal Medicare Catastrophic Coverage Act of 1988, as such act existed on January 1, 2014, as authorized pursuant to sections 43-2510 and 43-2511 for services to school-age children, excluding amounts designated as reimbursement for costs associated with the implementation and administration of the billing system pursuant to section 43-2511;
- (16) Receipts for accelerated or differentiated curriculum programs pursuant to sections 79-1106 to 79-1108.03; and
- (17) Revenue received from the nameplate capacity tax distributed pursuant to section 77-6204.

**Source:** Laws 1997, LB 710, § 12; Laws 1997, LB 806, § 50; Laws 1998, LB 306, § 44; Laws 1998, LB 1229, § 4; Laws 1998, Spec. Sess., LB 1, § 25; Laws 1999, LB 149, § 9; Laws 2001, LB 797, § 25; Laws 2001, LB 833, § 6; Laws 2006, LB 1208, § 6; Laws 2007, LB603, § 5; Laws 2008, LB988, § 40; Laws 2010, LB1014, § 2; Laws 2010, LB1048, § 16; Laws 2011, LB235, § 18; Laws 2014, LB276, § 5; Laws 2015, LB525, § 22; Laws 2016, LB1067, § 41.

#### Cross References

Special Education Act, see section 79-1110.

### **79-1022 Distribution of income tax receipts and state aid; effect on budget.**

(1) On or before June 1, 2017, and on or before March 1 of each year thereafter, for each ensuing fiscal year, the department shall determine the amounts to be distributed to each local system and each district for the ensuing school fiscal year pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, each learning community for school fiscal years prior to school fiscal year 2017-18, and each district. Except as otherwise provided in this section, the amount to be distributed to each district from the amount certified for a local system shall be proportional based on the formula students attributed to each district in the local system. For school fiscal years prior to school fiscal year 2017-18, the amount to be distributed to each

district that is a member of a learning community from the amount certified for the local system shall be proportional based on the formula needs calculated for each district in the local system. On or before June 1, 2017, and on or before March 1 of each year thereafter, for each ensuing fiscal year, the department shall report the necessary funding level for the ensuing school fiscal year to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. The report submitted to the committees of the Legislature shall be submitted electronically. Except as otherwise provided in this subsection, certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and deducted prior to calculating the property tax request in the district's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024.

(2) Except as provided in this subsection, subsection (8) of section 79-1016, and sections 79-1005, 79-1033, and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning in September of each ensuing school fiscal year and ending in June of the following year, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year.

**Source:** Laws 1990, LB 1059, § 13; Laws 1991, LB 511, § 79; Laws 1992, LB 245, § 84; Laws 1994, LB 1290, § 8; Laws 1994, LB 1310, § 16; Laws 1995, LB 840, § 9; R.S.Supp., 1995, § 79-3813; Laws 1996, LB 900, § 668; Laws 1996, LB 1050, § 30; Laws 1997, LB 710, § 13; Laws 1997, LB 713, § 5; Laws 1997, LB 806, § 51; Laws 1998, Spec. Sess., LB 1, § 28; Laws 1999, LB 149, § 10; Laws 1999, LB 194, § 35; Laws 1999, LB 813, § 23; Laws 2002, LB 898, § 12; Laws 2002, Second Spec. Sess., LB 4, § 1; Laws 2003, LB 67, § 12; Laws 2003, LB 540, § 5; Laws 2004, LB 973, § 67; Laws 2005, LB 126, § 47; Laws 2005, LB 198, § 3; Laws 2006, LB 1024, § 86; Referendum 2006, No. 422; Laws 2007, LB21, § 3; Laws 2007, LB641, § 28; Laws 2008, LB988, § 41; Laws 2009, LB61, § 1; Laws 2009, LB545, § 15; Laws 2009, LB548, § 1; Laws 2010, LB711, § 2; Laws 2010, LB1071, § 19; Laws 2011, LB18, § 6; Laws 2012, LB633, § 1; Laws 2012, LB782, § 159; Laws 2013, LB408, § 1; Laws 2014, LB838, § 1; Laws 2016, LB1067, § 43; Laws 2017, LB119, § 1.

#### **79-1022.02 School fiscal year 2017-18 certifications null and void.**

Notwithstanding any other provision of law, any certification of state aid pursuant to section 79-1022, certification of budget authority pursuant to section 79-1023, and certification of applicable allowable reserve percentages pursuant to section 79-1027 completed prior to February 16, 2017, for school fiscal year 2017-18 is null and void.

**Source:** Laws 2002, LB 898, § 13; Laws 2003, LB 540, § 6; Laws 2008, LB988, § 42; Laws 2011, LB18, § 7; Laws 2012, LB633, § 2; Laws 2017, LB119, § 2.

**79-1023 School district; general fund budget of expenditures; limitation; department; certification.**

(1) On or before June 1, 2017, and on or before March 1 of each year thereafter, the department shall determine and certify to each school district budget authority for the general fund budget of expenditures for the ensuing school fiscal year.

(2) Except as provided in sections 79-1028.01, 79-1029, 79-1030, and 81-829.51, each school district shall have budget authority for the general fund budget of expenditures equal to the greater of (a) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated, (b) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by an amount equal to any student growth adjustment calculated for the school fiscal year for which budget authority is being calculated, or (c) one hundred ten percent of formula need for the school fiscal year for which budget authority is being calculated minus the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year, which special education budget of expenditures is increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated.

(3) For any school fiscal year for which the budget authority for the general fund budget of expenditures for a school district is based on a student growth adjustment, the budget authority for the general fund budget of expenditures for such school district shall be adjusted in future years to reflect any student growth adjustment corrections related to such student growth adjustment.

**Source:** Laws 1990, LB 1059, § 14; Laws 1991, LB 829, § 33; Laws 1992, LB 1063, § 202; Laws 1992, Second Spec. Sess., LB 1, § 173; Laws 1995, LB 613, § 3; Laws 1996, LB 299, § 27; R.S.Supp., 1995, § 79-3814; Laws 1996, LB 900, § 669; Laws 1998, LB 989, § 8; Laws 2003, LB 67, § 13; Laws 2008, LB988, § 43; Laws 2009, LB61, § 2; Laws 2009, LB545, § 16; Laws 2009, LB548, § 2; Laws 2009, First Spec. Sess., LB5, § 11; Laws 2010, LB711, § 3; Laws 2010, LB1071, § 20; Laws 2011, LB18, § 8; Laws 2011, LB235, § 19; Laws 2012, LB633, § 3; Laws 2013, LB408, § 2; Laws 2014, LB838, § 2; Laws 2015, LB283, § 3; Laws 2017, LB119, § 3.

**Cross References**

Retirement expenditures, not exempt from limitations, see section 79-977.

**79-1024 Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect.**

(1) The department may require each district to submit to the department a duplicate copy of such portions of the district's budget statement as the Commissioner of Education directs. The department may verify any data used to meet the requirements of the Tax Equity and Educational Opportunities Support Act. The Auditor of Public Accounts shall review each district's budget

statement for statutory compliance, make necessary changes in the budget documents for districts to effectuate the budget limitations imposed pursuant to sections 79-1023 to 79-1030, and notify the Commissioner of Education of any district failing to submit to the auditor the budget documents required pursuant to this subsection by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511.

(2) If a school district fails to submit to the department or the auditor the budget documents required pursuant to subsection (1) of this section by the date established in subsection (1) of section 13-508 or fails to make any corrections of errors in the documents pursuant to section 13-504 or 13-511, the commissioner, upon notification from the auditor or upon his or her own knowledge that the required budget documents and any required corrections of errors from any school district have not been properly filed in accordance with the Nebraska Budget Act and after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the required budget documents or corrections of errors are received by the auditor and the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of the required budget documents or corrections of errors. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of property tax receipts allocated to the school district by the learning community coordinating council for school fiscal years prior to school fiscal year 2017-18, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031. The board of any district failing to submit to the department or the auditor the budget documents required pursuant to this section by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511 shall be liable to the school district for all school money which such district may lose by such failing.

**Source:** Laws 1990, LB 1059, § 15; Laws 1991, LB 511, § 80; Laws 1992, LB 245, § 85; Laws 1992, LB 1001, § 43; R.S.1943, (1994), § 79-3815; Laws 1996, LB 900, § 670; Laws 1997, LB 269, § 61; Laws 1997, LB 710, § 14; Laws 1998, Spec. Sess., LB 1, § 29; Laws 1999, LB 272, § 93; Laws 1999, LB 813, § 24; Laws 2001, LB 797, § 26; Laws 2003, LB 67, § 14; Laws 2006, LB 1024, § 87; Laws 2008, LB988, § 44; Laws 2009, LB392, § 11; Laws 2016, LB1067, § 44.

#### Cross References

Nebraska Budget Act, see section 13-501.

### 79-1027 Budget; restrictions.

No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0 - 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before June 1, 2017, and on or before March 1 each year thereafter, the department shall determine and certify each district's applicable allowable reserve percentage for the ensuing school fiscal year.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district's applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

**Source:** Laws 1990, LB 1059, § 18; Laws 1991, LB 511, § 83; Laws 1992, LB 245, § 88; Laws 1992, LB 1063, § 204; Laws 1992, Second Spec. Sess., LB 1, § 175; R.S.1943, (1994), § 79-3818; Laws 1996, LB 900, § 673; Laws 1998, Spec. Sess., LB 1, § 31; Laws 1999, LB 149, § 12; Laws 1999, LB 813, § 26; Laws 2001, LB 797, § 28; Laws 2002, LB 460, § 2; Laws 2003, LB 67, § 16; Laws 2005, LB 126, § 49; Referendum 2006, No. 422; Laws 2007, LB21, § 5; Laws 2009, LB61, § 4; Laws 2009, LB545, § 18; Laws 2009, LB548, § 4; Laws 2010, LB711, § 5; Laws 2010, LB1071, § 22; Laws 2011, LB18, § 10; Laws 2012, LB633, § 4; Laws 2013, LB408, § 3; Laws 2014, LB838, § 3; Laws 2017, LB119, § 4.

**79-1027.01 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-1028.01 School fiscal years; district may exceed certain limits; situations enumerated; state board; duties.**

(1) For each school fiscal year, a school district may exceed its budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 for such school fiscal year by a specific dollar amount for the following exclusions:

(a) Expenditures for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;



(b) Expenditures for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district;

(c) Expenditures pursuant to the Retirement Incentive Plan authorized in section 79-855 or the Staff Development Assistance authorized in section 79-856;

(d) Expenditures of amounts received from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;

(e) Expenditures to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent;

(f) Expenditures to pay for school district contributions pursuant to subdivision (1)(c)(i) or (1)(d)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent;

(g) Expenditures for incentives agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment occurring prior to July 1, 2009, occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year, or, to the extent that a district demonstrates to the State Board of Education pursuant to subsection (3) of this section that the agreement will result in a net savings in salary and benefit costs to the school district over a five-year period, occurring on or after the first day of the 2013-14 school year and prior to September 1, 2017;

(h) Expenditures by a school district with budgeted expenditures otherwise equal to the budget authority for the general fund budget of expenditures for such school district as calculated pursuant to section 79-1023 for such school fiscal year for current and future qualified voluntary termination incentives for certificated teachers pursuant to subsection (3) of section 79-8,142 that are not otherwise included in an exclusion pursuant to this subsection;

(i) Expenditures by a school district with budgeted expenditures otherwise equal to the budget authority for the general fund budget of expenditures for such school district as calculated pursuant to section 79-1023 for such school fiscal year for seventy-five percent of incentives agreed to be paid to certificated employees in exchange for a voluntary termination of employment occurring between September 1, 2017, and August 31, 2018, as a result of a collective-bargaining agreement in force and effect on September 1, 2017, that are not otherwise included in an exclusion pursuant to this subsection;

(j) Expenditures by a school district with budgeted expenditures otherwise equal to the budget authority for the general fund budget of expenditures for such school district as calculated pursuant to section 79-1023 for such school fiscal year for fifty percent of incentives agreed to be paid to certificated employees in exchange for a voluntary termination of employment occurring between September 1, 2018, and August 31, 2019, as a result of a collective-

bargaining agreement in force and effect on September 1, 2017, that are not otherwise included in an exclusion pursuant to this subsection;

(k) Expenditures by a school district with budgeted expenditures otherwise equal to the budget authority for the general fund budget of expenditures for such school district as calculated pursuant to section 79-1023 for such school fiscal year for twenty-five percent of incentives agreed to be paid to certificated employees in exchange for a voluntary termination of employment occurring between September 1, 2019, and August 31, 2020, as a result of a collective-bargaining agreement in force and effect on September 1, 2017, that are not otherwise included in an exclusion pursuant to this subsection;

(l) The special education budget of expenditures;

(m) Expenditures of special grant funds; and

(n) Expenditures of funds received as federal impact aid pursuant to 20 U.S.C. 7701 to 7714, as such sections existed on January 1, 2016, due to a district having land within its boundaries that is federal property classified as Indian lands under 20 U.S.C. 7713(7), as such section existed on January 1, 2016, and funds received as impact aid due to children in attendance who resided on Indian lands in accordance with 20 U.S.C. 7703(a)(1)(C), as such section existed on January 1, 2016.

(2) For each school fiscal year, a school district may exceed its budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 for such school fiscal year by a specific dollar amount and include such dollar amount in the budget of expenditures used to calculate budget authority for the general fund budget of expenditures pursuant to section 79-1023 for future years for the following exclusions:

(a) The first school fiscal year the district will be participating in Network Nebraska for the full school fiscal year, for the difference of the estimated expenditures for such school fiscal year for telecommunications services, access to data transmission networks that transmit data to and from the school district, and the transmission of data on such networks as such expenditures are defined by the department for purposes of the distance education and telecommunications allowance minus the dollar amount of such expenditures for the second school fiscal year preceding the first full school fiscal year the district participates in Network Nebraska;

(b) Expenditures for new elementary attendance sites in the first year of operation or the first year of operation after being closed for at least one school year if such elementary attendance site will most likely qualify for the elementary site allowance in the immediately following school fiscal year as determined by the state board;

(c) For the first school fiscal year for which early childhood education membership is included in formula students for the calculation of state aid, expenditures for early childhood education equal to the amount the school district received in early childhood education grants pursuant to section 79-1103 for the prior school fiscal year, increased by the basic allowable growth rate; and

(d) For school fiscal year 2013-14, an amount not to exceed two percent over the previous school year if such increase is approved by a seventy-five percent majority vote of the school board of such district.

(3) The state board shall approve, deny, or modify the amount allowed for any exclusions to the budget authority for the general fund budget of expenditures pursuant to this section.

**Source:** Laws 2008, LB988, § 46; Laws 2008, LB1154, § 10; Laws 2009, LB545, § 19; Laws 2010, LB1014, § 3; Laws 2011, LB235, § 21; Laws 2011, LB382, § 6; Laws 2011, LB509, § 39; Laws 2013, LB407, § 13; Laws 2013, LB410, § 10; Laws 2013, LB553, § 16; Laws 2014, LB967, § 18; Laws 2015, LB525, § 23; Laws 2016, LB1066, § 18; Laws 2017, LB512, § 15; Laws 2018, LB1005, § 34.

Operative date April 24, 2018.

Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

**Emergency Management Act**, see section 81-829.36.

**79-1028.02 Repealed. Laws 2016, LB1066, § 25.**

**79-1028.04 Repealed. Laws 2016, LB1066, § 25.**

**79-1029 Budget authority for general fund budget of expenditures; vote to exceed; procedure.**

A school district may exceed the budget authority for the general fund budget of expenditures prescribed in section 79-1023 by an amount approved by a majority of legal voters voting on the issue at a primary, general, or special election called for such purpose upon the recommendation of the board or upon the receipt by the county clerk or election commissioner of a petition requesting an election, signed by at least five percent of the legal voters of the district. The recommendation of the board or the petition of the legal voters shall include the amount by which the board would increase its general fund budget of expenditures for the ensuing school year over and above the budget authority for the general fund budget of expenditures prescribed in section 79-1023. The county clerk or election commissioner shall place the question on the primary or general election ballot or call for a special election on the issue after the receipt of such board recommendation or legal voter petition. The election shall be held pursuant to the Election Act or section 77-3444, and all costs for a special election shall be paid by the district. A vote to exceed the budget authority for the general fund budget of expenditures prescribed in section 79-1023 may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

**Source:** Laws 1990, LB 1059, § 20; Laws 1991, LB 511, § 85; Laws 1992, LB 245, § 90; Laws 1994, LB 76, § 608; Laws 1996, LB 299, § 31; R.S.1943, (1994), § 79-3820; Laws 1996, LB 900, § 675; Laws 1997, LB 345, § 29; Laws 1998, LB 989, § 12; Laws 1999, LB 813, § 28; Laws 2000, LB 1213, § 1; Laws 2003, LB 67, § 19; Laws 2008, LB988, § 47; Laws 2011, LB235, § 22; Laws 2018, LB377, § 63.

Operative date January 1, 2019.

Cross References

**Election Act**, see section 32-101.

**79-1030 Unused budget authority for general fund budget of expenditures; carried forward; limitation.**

A school district may choose not to increase its general fund budget of expenditures by the full amount of budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023. In such cases, the department shall calculate the amount of unused budget authority which shall be carried forward to future budget years. The amount of unused budget authority that may be used by a district in a single school fiscal year to increase its general fund budget of expenditures above the budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 shall be limited to two percent of the difference of the general fund budget of expenditures minus the sum of special grant funds, the special education budget of expenditures, and exceptions pursuant to subsection (1) of section 79-1028.01 for the immediately preceding school fiscal year.

**Source:** Laws 1990, LB 1059, § 21; R.S.1943, (1994), § 79-3821; Laws 1996, LB 900, § 676; Laws 1998, LB 989, § 13; Laws 1998, Spec. Sess., LB 1, § 32; Laws 2006, LB 1024, § 91; Laws 2010, LB1071, § 23; Laws 2011, LB235, § 23; Laws 2018, LB377, § 64.

Operative date January 1, 2019.

#### **79-1031.01 Appropriations Committee; duties.**

The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid that will be certified to school districts on or before June 1, 2017, and on or before March 1 of each year thereafter for each ensuing school fiscal year in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

**Source:** Laws 1997, LB 710, § 17; Laws 1997, LB 806, § 54; Laws 1998, Spec. Sess., LB 1, § 34; Laws 1999, LB 149, § 15; Laws 2002, LB 898, § 14; Laws 2005, LB 126, § 51; Referendum 2006, No. 422; Laws 2007, LB21, § 6; Laws 2008, LB988, § 48; Laws 2009, LB61, § 5; Laws 2009, LB545, § 22; Laws 2009, LB548, § 5; Laws 2010, LB711, § 6; Laws 2010, LB1071, § 24; Laws 2011, LB18, § 13; Laws 2012, LB633, § 5; Laws 2013, LB408, § 4; Laws 2014, LB838, § 4; Laws 2017, LB119, § 5.

#### **79-1033 State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments.**

(1) Except as otherwise provided in the Tax Equity and Educational Opportunities Support Act, state aid payable pursuant to the act for each school fiscal year shall be based upon data found in applicable reports for the most recently available complete data year. The annual financial reports and the annual statistical summary of all school districts shall be submitted to the Commissioner of Education pursuant to the dates prescribed in section 79-528. If a school district fails to timely submit its reports, the commissioner, after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the act be withheld until such time as the reports are received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such reports. The county treasurer shall withhold such money. For school districts that are

members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of state aid and property tax receipts allocated to the school district by the learning community coordinating council for school fiscal years prior to school fiscal year 2017-18, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the school fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031.

(2) A district which receives, or has received in the most recently available complete data year or in either of the two school fiscal years preceding the most recently available complete data year, federal funds in excess of twenty-five percent of its general fund budget of expenditures may apply for early payment of state aid paid pursuant to the act when such federal funds are not received in a timely manner. Such application may be made at any time by a district suffering such financial hardship and may be for any amount up to fifty percent of the remaining amount to which the district is entitled during the current school fiscal year. The state board may grant the entire amount applied for or any portion of such amount if the state board finds that a financial hardship exists in the district. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district. For purposes of this subsection, financial hardship means a situation in which income to a district is exceeded by liabilities to such a degree that if early payment is not received it will be necessary for the district to discontinue vital services or functions.

**Source:** Laws 1990, LB 1059, § 24; Laws 1991, LB 511, § 88; Laws 1992, LB 245, § 93; Laws 1992, LB 1001, § 44; Laws 1993, LB 348, § 73; Laws 1994, LB 1290, § 9; R.S.1943, (1994), § 79-3824; Laws 1996, LB 900, § 679; Laws 1997, LB 710, § 18; Laws 1998, Spec. Sess., LB 1, § 36; Laws 1999, LB 272, § 94; Laws 2006, LB 1024, § 92; Laws 2009, LB392, § 12; Laws 2016, LB1067, § 45.

## (b) SCHOOL FUNDS

### **79-1035 School funds; apportionment by Commissioner of Education; basis.**

(1)(a) The State Treasurer shall, each year on or before the third Monday in January, make a complete exhibit of all money belonging to the permanent school fund and the temporary school fund as returned to him or her from the several counties, together with the amount derived from other sources, and deliver such exhibit duly certified to the Commissioner of Education.

(b) Beginning in 2016 and each year thereafter, the exhibit required in subdivision (1)(a) of this section shall include a separate accounting, not to exceed an amount of ten million dollars, of the income from solar and wind agreements on school lands. The amount of income from solar and wind agreements on school lands shall be used to fund the grants described in

section 79-308. The Board of Educational Lands and Funds shall provide the State Treasurer with the information necessary to make the exhibit required by this subsection. Separate accounting shall not be made for income from solar or wind agreements on school lands that exceeds the sum of ten million dollars.

(2) On or before February 25 following receipt of the exhibit from the State Treasurer pursuant to subsection (1) of this section, the Commissioner of Education shall make the apportionment of the temporary school fund to each school district as follows: From the whole amount, less the amount of income from solar and wind agreements on school lands, there shall be paid to those districts in which there are school or saline lands, which lands are used for a public purpose, an amount in lieu of tax money that would be raised if such lands were taxable, to be fixed in the manner prescribed in section 79-1036; and the remainder shall be apportioned to the districts according to the pro rata enumeration of children who are five through eighteen years of age in each district last returned from the school district. The calculation of apportionment for each school fiscal year shall include any corrections to the prior school fiscal year's apportionment.

(3) The Commissioner of Education shall certify the amount of the apportionment of the temporary school fund as provided in subsection (2) of this section to the Director of Administrative Services. The Director of Administrative Services shall draw a warrant on the State Treasurer in favor of the various districts for the respective amounts so certified by the Commissioner of Education.

(4) For purposes of this section, agreement means any lease, easement, covenant, or other such contractual arrangement.

**Source:** Laws 1881, c. 78, subdivision XI, § 3, p. 369; R.S.1913, § 6930; Laws 1915, c. 122, § 1, p. 280; C.S.1922, § 6513; C.S.1929, § 79-2002; Laws 1933, c. 144, § 3, p. 558; C.S.Supp.,1941, § 79-2002; R.S.1943, § 79-2002; Laws 1945, c. 210, § 1, p. 622; Laws 1949, c. 256, § 377, p. 817; Laws 1957, c. 359, § 1, p. 1217; Laws 1963, c. 493, § 1, p. 1575; Laws 1971, LB 1002, § 1; Laws 1989, LB 487, § 9; Laws 1990, LB 1090, § 22; Laws 1994, LB 858, § 10; R.S.1943, (1994), § 79-1302; Laws 1996, LB 900, § 681; Laws 1997, LB 345, § 30; Laws 1997, LB 710, § 19; Laws 1999, LB 272, § 95; Laws 2001, LB 797, § 31; Laws 2010, LB1014, § 4; Laws 2012, LB828, § 20; Laws 2015, LB525, § 24.

**79-1036 School funds; public lands; amount in lieu of tax; reappraisal; appeal.**

(1) In making the apportionment under section 79-1035, the Commissioner of Education shall distribute from the school fund for school purposes to (a) for school fiscal years prior to school fiscal year 2017-18, any and all learning communities and school districts which are not members of a learning community, and (b) for school fiscal year 2017-18 and each school fiscal year thereafter, all school districts in which there are situated school lands which have not been sold and transferred by deed or saline lands owned by the state, which lands are being used for a public purpose, an amount in lieu of tax money that would be raised by school district levies if such lands were taxable, to be ascertained in accordance with subsection (2) of this section.

(2) The county assessor shall certify to the Commissioner of Education the tax levies of each school district and, for levies certified prior to January 1, 2017, learning community in which school land or saline land is located and the last appraised value of such school land, which value shall be the same percentage of the appraised value as the percentage of the assessed value is of market value in subsection (2) of section 77-201 for the purpose of applying the applicable tax levies for each district and, for levies certified prior to January 1, 2017, learning community in determining the distribution to the districts of such amounts. The school board of any school district and, for levies certified prior to January 1, 2017, the learning community coordinating council of any learning community in which there is located any leased or undeeded school land or saline land subject to this section may appeal to the Board of Educational Lands and Funds for a reappraisal of such school land if such school board or learning community coordinating council deems the land not appraised in proportion to the value of adjoining land of the same or similar value. The Board of Educational Lands and Funds shall proceed to investigate the facts involved in such appeal and, if the contention of the school board or learning community coordinating council is correct, make the proper reappraisal. The value calculation in this subsection shall be used by the Commissioner of Education for making distributions in each school fiscal year.

**Source:** Laws 1881, c. 78, subdivision VIII, § 9, p. 364; R.S.1913, § 6906; Laws 1921, c. 82, § 1, p. 296; C.S.1922, § 6482; Laws 1929, c. 187, § 1, p. 651; C.S.1929, § 79-1609; Laws 1933, c. 144, § 2, p. 557; C.S.Supp.,1941, § 79-1609; Laws 1943, c. 200, § 1, p. 670; R.S.1943, § 79-1612; Laws 1947, c. 282, § 1, p. 890; Laws 1949, c. 256, § 378, p. 818; Laws 1957, c. 359, § 2, p. 1218; Laws 1979, LB 187, § 246; Laws 1982, LB 572, § 1; Laws 1983, LB 39, § 1; Laws 1990, LB 1090, § 23; Laws 1991, LB 511, § 61; Laws 1992, LB 245, § 66; Laws 1993, LB 839, § 5; Laws 1994, LB 858, § 11; R.S.1943, (1994), § 79-1303; Laws 1996, LB 900, § 682; Laws 1997, LB 270, § 104; Laws 1998, Spec. Sess., LB 1, § 37; Laws 1999, LB 272, § 96; Laws 2001, LB 797, § 32; Laws 2003, LB 394, § 8; Laws 2010, LB1070, § 8; Laws 2016, LB1067, § 46; Laws 2018, LB377, § 65.

Operative date January 1, 2019.

#### **79-1041 County treasurer; distribute school funds; when.**

Each county treasurer of a county with territory in a learning community shall distribute any funds collected by such county treasurer from the common general fund levy of such learning community to each member school district pursuant to section 79-1073 at least once each month.

Each county treasurer shall, upon request of a majority of the members of the school board or board of education in any school district, at least once each month distribute to the district any funds collected by such county treasurer for school purposes.

**Source:** Laws 1976, LB 803, § 1; R.S.1943, (1994), § 79-1307.01; Laws 1996, LB 900, § 687; Laws 2009, LB392, § 13; Laws 2016, LB1067, § 47.

#### **79-1045 Forest reserve funds; apportionment; how made.**

The county treasurer shall, within twenty days after receiving the apportionment under section 79-1044, apportion the amount as follows: (1) To each school district lying wholly or partly within any such forest reserve, an amount equal to the actual per pupil cost for each pupil actually residing in that part of the district which is within such forest reserve, but this apportionment per pupil shall not exceed the average annual cost per pupil, based on average daily attendance within that county; and (2) of the remaining amount, one-fifth to the public road fund of the county, one-fifth equally to the several school districts in the county, and the remaining three-fifths to the several school districts in the county pro rata according to the enumeration of scholars last returned by the districts. The county treasurer shall, with the approval of the county board, have authority to retain the money to be allocated under this subdivision to Class III school districts of the county to be used for the establishment and support of a county circulating library for Class III school districts. A school district which has failed to sustain a school taught by a legally qualified teacher for the length of time required by law shall not be entitled to receive any portion of the Forest Reserve Fund.

**Source:** Laws 1907, c. 143, § 2, p. 453; R.S.1913, § 6939; C.S.1922, § 6522; C.S.1929, § 79-2011; R.S.1943, § 79-2011; Laws 1949, c. 256, § 385, p. 821; Laws 1953, c. 312, § 1, p. 1037; Laws 1963, c. 494, § 1, p. 1578; Laws 1965, c. 529, § 1, p. 1662; R.S.1943, (1994), § 79-1310; Laws 1996, LB 900, § 691; Laws 1999, LB 272, § 100; Laws 2018, LB377, § 66.  
Operative date January 1, 2019.

**79-1054 State Board of Education; establish innovation grant program; application; contents; department; duties; report; Department of Education Innovative Grant Fund; created; use; investment.**

(1) The State Board of Education shall establish a competitive innovation grant program with funding from the Nebraska Education Improvement Fund pursuant to section 9-812. Grantees shall be a school district, an educational service unit, or a combination of entities that includes at least one school district or educational service unit. For grantees that consist of a combination of entities, a participating school district or educational service unit shall be designated to act as the fiscal agent and administer the program funded by the grant. The state board shall only award grants pursuant to applications that the state board deems to be sufficiently innovative and to have a high chance of success.

(2) An application for a grant pursuant to subsection (1) of this section shall describe:

(a) Specific measurable objectives for improving education outcomes for early childhood students, elementary students, middle school students, or high school students or for improving the transitions between any successive stages of education or between education and the workforce;

(b) The method for annually evaluating progress toward a measurable objective, with a summative evaluation of progress submitted to the state board and electronically to the Education Committee of the Legislature on or before July 1, 2019;

(c) The potential for the project to be both scalable and replicable; and



(d) Any cost savings that could be achieved by reductions in other programs if the funded program is successful.

(3) Based on evaluations received on or before July 1, 2019, for each grant, the State Board of Education shall recommend the grant project as:

- (a) Representing a best practice;
- (b) A model for a state-supported program; or
- (c) A local issue for further study.

(4) On or before December 1, 2017, and on or before December 1 of each year thereafter, the state board shall electronically submit a report to the Clerk of the Legislature on all such grants, including, but not limited to, the results of the evaluations for each grant. The state board may adopt and promulgate rules and regulations to carry out this section, including, but not limited to, application procedures, selection procedures, and annual evaluation reporting procedures.

(5) The Department of Education Innovative Grant Fund is created. The fund shall be administered by the State Department of Education and shall consist of transfers pursuant to section 9-812, repayments of grant funds, and interest payments received in the course of administering this section. The fund shall be used to carry out this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2015, LB519, § 2; Laws 2017, LB512, § 16.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **79-1065 Financial support to school districts; adjustments authorized; records.**

The State Department of Education shall adjust payments of state funds provided under Chapter 79 or federal funds provided under federal law to school districts which, after final determination, received funds not equal to the appropriate allocation for the previous school fiscal year such that the district will receive the funds to which it was finally determined to be entitled. If the total adjustment cannot be made from the funds to be provided in the current school fiscal year, the adjustment shall be prorated, with additional adjustments made to payments for future school fiscal years. The department shall maintain an accurate account and a record of the reasons the adjustments were made and the amount of such adjustments.

**Source:** Laws 1976, LB 903, § 10; Laws 1987, LB 367, § 68; Laws 1990, LB 1059, § 41; Laws 1991, LB 511, § 63; Laws 1992, LB 245, § 68; Laws 1992, LB 1001, § 30; R.S.1943, (1994), § 79-1369; Laws 1996, LB 900, § 711; Laws 1997, LB 710, § 20; Laws 1998, Spec. Sess., LB 1, § 38; Laws 2017, LB512, § 17.

### **79-1065.01 Financial support to school districts; lump-sum payments.**

If the adjustment under section 79-1065 results in a school district being entitled to the payment of additional funds, the State Department of Education shall automatically make a lump-sum payment to the school district if the payment is less than one thousand dollars. For amounts equal to or greater

than one thousand dollars, the district may apply to the State Department of Education for a lump-sum payment for any amount up to one hundred percent of the adjustment, except that when a school district is to receive a lump-sum payment pursuant to section 79-1022, one hundred percent of the adjustment shall be paid as one lump-sum payment on the last business day of December during the ensuing school fiscal year. The department shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments pursuant to section 79-1022. The department shall make such payment in a lump sum not later than the last business day of September of the year in which the final determination under this section is made.

**Source:** Laws 2000, LB 1213, § 2; Laws 2009, LB549, § 34; Laws 2016, LB1066, § 19.

### **79-1065.02 State aid payments; adjustments; application; calculation.**

(1) State aid payments shall be adjusted when property within the boundaries of a school district is transferred to another school district due to a change in school district boundaries in response to annexation of the transferred property by a city or village.

(2) To qualify for additional state aid pursuant to this section, the school district from which property is being transferred shall apply on a form prescribed by the State Department of Education on or before August 20 preceding the first school fiscal year for which the property will not be available for taxation for the school district's general fund levy. On or before such deadline, the applicant school district shall send copies of the application to the high school districts of the local systems receiving valuation in the transfer. For purposes of this section, property is deemed transferred from the school district whether the property was within the boundaries of the school district or the property was affiliated with the school district.

(3) Upon receipt of the application, the department, with the assistance of the Property Tax Administrator, shall calculate the amount of additional state aid, if any, that the local system, as defined in section 79-1003, for the applicant school district would have received for such school fiscal year if the adjusted valuation for the transferred property had not been included in the adjusted valuation of such local system for the calculation of state aid for such school fiscal year. On or before September 20 of such school fiscal year, the department shall certify to the applicant school district the amount of additional state aid, if any, the district will receive. Except as otherwise provided in this subsection, if such applicant school district receives a lump-sum payment pursuant to subsection (2) of section 79-1022, such lump-sum payment shall be increased by the amount of additional state aid. Except as otherwise provided in this subsection, if such applicant school district does not receive a lump-sum payment pursuant to such subsection, state aid payments shall be increased by one-tenth of the amount of additional state aid for each of the ten state aid payments for such school fiscal year. If a portion of the total reduction calculated pursuant to subsection (4) of this section for local systems receiving valuation in the transfer of property that is the subject of the application is delayed until future years, the additional state aid to be paid in the school fiscal year described in subsection (2) of this section shall be reduced by the amount

of the total reduction that is delayed until future years. The amount of the reduction shall be paid as additional aid in the next school fiscal year.

(4) The state aid payments shall be reduced for the high school district of each receiving local system. An amount equal to the additional state aid calculated pursuant to subsection (3) of this section for the local system of an applicant school district shall be attributed to the local systems receiving valuation in such transfer based upon the ratio of the adjusted valuation received by each local system divided by the total adjusted valuation transferred from the applicant school district. If such high school district receives a lump-sum payment pursuant to subsection (2) of section 79-1022, such lump-sum payment shall be reduced by the amount attributed to the receiving local system. If the high school district of a receiving local system does not receive a lump-sum payment pursuant to such subsection, state aid payments shall be reduced by one-tenth of the amount attributed to such receiving local system for each of the ten state aid payments for such school fiscal year. If the total reduction is greater than the total state aid payments for such school fiscal year, the remainder shall be subtracted from state aid payments in future school fiscal years until the total reduction has been subtracted from state aid payments. On or before September 20 of such school fiscal year, the department shall certify to the high school district of the receiving local system the amount of the reduction in state aid.

(5) For purposes of the final calculation of state aid pursuant to section 79-1065, the adjusted valuation of the property that was transferred shall also be transferred for purposes of adjusted valuation for the final calculation of state aid. For determining adjustments in state aid pursuant to section 79-1065, the final calculation of state aid shall be compared to the state aid certified for such school fiscal year combined with any adjustments in state aid payments and transfers from other districts pursuant to this section.

**Source:** Laws 2005, LB 198, § 1; Laws 2018, LB377, § 67.  
Operative date January 1, 2019.

**79-1072 School district; contingency fund; authorized; use.**

The school board or board of education of any school district may establish a contingency fund for losses. Such contingency fund shall be established and maintained by transfers from the general fund of such school district as authorized by the school board or board of education of such school district. Disbursements from such contingency fund shall not exceed five percent of the total budgeted general fund expenditures of the school district and shall be used only for defense against losses, payment of losses, and transfer of funds to the general fund of such school district as authorized by the board.

**Source:** Laws 1989, LB 228, § 1; R.S.1943, (1994), § 79-546.01; Laws 1996, LB 900, § 718; Laws 2018, LB377, § 68.  
Operative date January 1, 2019.

(c) SCHOOL TAXATION

**79-1073 General fund property tax receipts; learning community coordinating council; certification; division; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.**

On or before September 1 for each year prior to 2017, each learning community coordinating council shall determine the expected amounts to be

distributed by the county treasurers to each member school district from general fund property tax receipts pursuant to subdivision (2)(b) of section 77-3442 and shall certify such amounts to each member school district, the county treasurer for each county containing territory in the learning community, and the State Department of Education. Such property tax receipts shall be divided among member school districts proportionally based on the difference of the school district's formula need calculated pursuant to section 79-1007.11 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the school fiscal year for which the distribution is being made.

Each time the county treasurer distributes property tax receipts from the common general fund levy to member school districts, the amount to be distributed to each district shall be proportional based on the total amounts to be distributed to each member school district for the school fiscal year. Each time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the common general fund levy for member school districts or any entity issues an in lieu of property tax reimbursement based on the common general fund levy for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.

**Source:** Laws 2006, LB 1024, § 93; Laws 2007, LB641, § 29; Laws 2008, LB988, § 49; Laws 2008, LB1154, § 11; Laws 2009, LB392, § 14; Laws 2009, LB545, § 23; Laws 2010, LB1070, § 9; Laws 2016, LB1067, § 48.

**79-1073.01 Repealed. Laws 2016, LB1067, § 70.**

**79-1075 Joint district or learning community; joint affiliated school system; tax levy; certification.**

(1) The county board of the county in which is located the schoolhouse or the administrative office of any joint school district or, for years prior to 2017, learning community shall make a levy for the school district or, for years prior to 2017, learning community, as may be necessary, and the county clerk of that headquarters county shall certify the levy, on or before the date prescribed in section 77-1601, to the county clerk of each county in which is situated any portion of the joint school district or learning community. This section shall apply to all taxes levied on behalf of school districts, including, but not limited to, taxes authorized by sections 10-304, 10-711, 77-1601, 79-747, 79-1084, 79-1085, 79-1086, 79-10,100, 79-10,110, 79-10,110.02, 79-10,118, 79-10,120, and 79-10,126.

(2) The county board of the county in which is located the schoolhouse or the administrative office of the high school district of a joint affiliated school system shall make a levy for the joint affiliated school system, as may be necessary, and the county clerk of that headquarters county shall certify the levy, on or before the date prescribed in section 77-1601, to the county clerk of each county in which is situated any portion of the joint affiliated school system. This section shall apply to all taxes levied on behalf of affiliated school

systems, including, but not limited to, taxes authorized by sections 79-10,110 and 79-10,110.02.

**Source:** Laws 1907, c. 118, § 2, p. 398; Laws 1913, c. 6, § 2, p. 64; R.S.1913, § 6742; C.S.1922, § 6283; C.S.1929, § 79-215; R.S. 1943, § 79-214; Laws 1949, c. 256, § 73, p. 717; Laws 1971, LB 292, § 7; Laws 1992, LB 1001, § 15; Laws 1993, LB 348, § 16; R.S.1943, (1994), § 79-434; Laws 1996, LB 900, § 721; Laws 2001, LB 711, § 17; Laws 2006, LB 1024, § 96; Laws 2016, LB 959, § 8; Laws 2016, LB1067, § 49; Laws 2018, LB377, § 69. Operative date January 1, 2019.

Cross References

For joint recreation facilities in conjunction with city of the second class, see sections 17-156 to 17-162.

**79-1077 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-1078 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

(d) SCHOOL BUDGETS AND ACCOUNTING

**79-1083 School tax; adopted budget statement; delivery; to whom.**

At the time the budget statement is certified to the levying board, each school board shall deliver to the county clerk of the headquarters county a copy of its adopted budget statement. If the school district is a member of a learning community, the school board shall also deliver to the learning community coordinating council a copy of the adopted budget statement for school fiscal years prior to school fiscal year 2017-18.

**Source:** Laws 1881, c. 78, subdivision V, § 2, p. 352; Laws 1889, c. 78, § 14, p. 549; R.S.1913, § 6782; C.S.1922, § 6323; C.S.1929, § 79-502; R.S.1943, § 79-502; Laws 1949, c. 256, § 74, p. 717; Laws 1955, c. 312, § 2, p. 964; Laws 1969, c. 714, § 1, p. 2740; Laws 1969, c. 50, § 3, p. 270; Laws 1969, c. 145, § 43, p. 699; Laws 1993, LB 348, § 17; R.S.1943, (1994), § 79-435; Laws 1996, LB 900, § 729; Laws 1999, LB 272, § 110; Laws 2006, LB 1024, § 97; Laws 2016, LB1067, § 50.

**79-1083.02 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-1084 Class III school district; school board; budget; tax; levy; publication of expenditures; violation; penalty; duty of county board.**

The school board of a Class III school district shall annually, on or before September 20, report in writing to the county board and, for years prior to 2017, the learning community coordinating council if the school district is a member of a learning community the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (1) The amount of funds required for the support of the schools during the ensuing school fiscal year; (2) the amount of funds required for the purchase of school sites; (3) the amount of funds required for the erection of

school buildings; (4) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (5) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect. For Class III school districts that are not members of a learning community, the county board shall levy and collect such taxes as are necessary to provide the amount of revenue from property taxes as indicated by all the data contained in the budget and the certificate prescribed by this section, at the time and in the manner provided in section 77-1601.

**Source:** Laws 1881, c. 78, subdivision XIV, § 23, p. 385; Laws 1885, c. 80, § 1, p. 329; Laws 1893, c. 31, § 2, p. 358; R.S.1913, § 6670; C.S.1922, § 6604; C.S.1929, § 79-2522; R.S.1943, § 79-2527; Laws 1947, c. 292, § 1, p. 904; Laws 1949, c. 256, § 243, p. 771; Laws 1959, c. 404, § 1, p. 1366; Laws 1972, LB 1070, § 2; Laws 1986, LB 960, § 42; Laws 1988, LB 1193, § 1; Laws 1993, LB 734, § 51; Laws 1995, LB 452, § 32; R.S.Supp.,1995, § 79-810; Laws 1996, LB 900, § 730; Laws 1997, LB 710, § 22; Laws 1998, Spec. Sess., LB 1, § 43; Laws 2006, LB 1024, § 98; Laws 2009, LB549, § 35; Laws 2016, LB1067, § 51.

#### Cross References

For legal rate for publications, see section 33-141.

### **79-1086 Class V school district; board of education; budget; how prepared; certification of levy; levy of taxes.**

(1) The board of education of a Class V school district that is not a member of a learning community shall annually during the month of July estimate the amount of resources likely to be received for school purposes, including the amounts available from fines, licenses, and other sources. Before the county board of equalization makes its levy each year, the board of education shall report to the county clerk the rate of tax deemed necessary to be levied upon the taxable value of all the taxable property of the district subject to taxation during the fiscal year next ensuing for (a) the support of the schools, (b) the purchase of school sites, (c) the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, (d) the payment of interest upon all bonds issued for school purposes, and (e) the creation of a sinking fund for the payment of such indebtedness. The county board of equalization shall levy the rate of tax so reported and demanded by the board of education and collect the tax in the same manner as other taxes are levied and collected.

(2) The school board of a Class V school district that is a member of a learning community shall annually, on or before September 20 of each year prior to 2017, report in writing to the county board and the learning communi-

ty coordinating council the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (a) The amount of funds required for the support of the schools during the ensuing school fiscal year; (b) the amount of funds required for the purchase of school sites; (c) the amount of funds required for the erection of school buildings; (d) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (e) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect.

**Source:** Laws 1891, c. 45, § 21, p. 325; Laws 1899, c. 68, § 1, p. 299; R.S.1913, § 7027; C.S.1922, § 6658; C.S.1929, § 79-2721; Laws 1931, c. 146, § 1, p. 400; Laws 1937, c. 183, § 1, p. 722; C.S.Supp.,1941, § 79-2721; R.S.1943, § 79-2722; Laws 1945, c. 214, § 1, p. 628; Laws 1947, c. 298, § 1, p. 913; Laws 1949, c. 271, § 4, p. 889; Laws 1949, c. 256, § 264, p. 780; Laws 1955, c. 320, § 1, p. 989; Laws 1976, LB 757, § 2; Laws 1979, LB 187, § 240; Laws 1992, LB 1063, § 198; Laws 1992, Second Spec. Sess., LB 1, § 169; R.S.1943, (1994), § 79-1007; Laws 1996, LB 900, § 732; Laws 2006, LB 1024, § 99; Laws 2009, LB549, § 36; Laws 2016, LB1067, § 52.

**79-1089 Audit by public accountant or certified public accountant; report; failure to comply; effect.**

In each school district the school board shall cause to be examined annually by a public accountant or by a certified public accountant all financial records which are maintained directly or indirectly in the administration and management of public school funds. Rules and regulations governing the scope, extent, pattern, and report of the examination shall be adopted and promulgated by the State Board of Education with the advice and counsel of the Auditor of Public Accounts. A copy of the report shall be filed with the Commissioner of Education and the Auditor of Public Accounts on or before November 5. When any school district fails to comply with this section, the commissioner shall, after notice to the district and an opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the district has complied with this section. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of compliance by the district with this section. The county treasurer shall withhold such money. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of

any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031.

**Source:** Laws 1963, c. 464, § 1, p. 1492; Laws 1979, LB 414, § 3; R.S.1943, (1987), § 79-546; Laws 1988, LB 970, § 2; Laws 1989, LB 487, § 6; Laws 1992, LB 119, § 1; Laws 1992, LB 1001, § 18; R.S.1943, (1994), § 79-4,141.01; Laws 1996, LB 900, § 735; Laws 1997, LB 710, § 23; Laws 1999, LB 149, § 18; Laws 1999, LB 272, § 111; Laws 2001, LB 797, § 40; Laws 2018, LB377, § 70.

Operative date January 1, 2019.

**Cross References**

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

**79-1090 Failure to approve budget; superintendent; duties.**

When a school board of any class of school district fails to approve a school district budget on or before the date required by subsection (1) of section 13-508, the superintendent of the school district shall prepare and file a budget document in accordance with the Nebraska Budget Act for the school district's general fund and for each other fund for which the district budgeted in the immediately preceding fiscal year. The document shall use the total budget of expenditures and cash reserves from the immediately preceding school fiscal year, except that in no case shall the budget of expenditures or cash reserves exceed any limits prescribed in the Tax Equity and Educational Opportunities Support Act or other state laws. The superintendent shall also estimate the revenue from sources other than property tax for each fund in accordance with subdivision (1)(c) of section 13-504 and section 79-1022.

**Source:** Laws 1989, LB 487, § 7; Laws 1991, LB 511, § 45; Laws 1992, LB 245, § 50; Laws 1994, LB 1310, § 5; R.S.1943, (1994), § 79-4,159; Laws 1996, LB 900, § 736; Laws 1998, Spec. Sess., LB 1, § 44; Laws 1999, LB 272, § 112; Laws 1999, LB 813, § 33; Laws 2018, LB377, § 71.

Operative date January 1, 2019.

**Cross References**

**Nebraska Budget Act**, see section 13-501.

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

(e) **SITE AND FACILITIES ACQUISITION,  
MAINTENANCE, AND DISPOSITION**

**79-1098 Schoolhouse; erection or improvement; equipment; special tax.**

Whenever it is deemed necessary (1) to erect a schoolhouse or school building or an addition or additions and improvements to any existing schoolhouse or (2) to purchase equipment for such schoolhouse or school buildings, in any school district in this state the school board may and, upon petition of not less than one-fourth of the legal voters of the school district, shall submit to the people of the school district at the next general election or special election a proposition to vote a special annual tax for that purpose of not to exceed seventeen and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district for a term of not to exceed ten



years. Such special tax may be voted at any annual or special meeting of the district by fifty-five percent of the legal voters attending such meeting.

**Source:** Laws 1935, c. 170, § 1, p. 624; C.S.Supp.,1941, § 79-133; R.S. 1943, § 79-144; Laws 1947, c. 270, § 1, p. 872; Laws 1949, c. 256, § 61, p. 713; Laws 1953, c. 287, § 79, p. 975; Laws 1979, LB 187, § 226; Laws 1992, LB 719A, § 183; R.S.1943, (1994), § 79-422; Laws 1996, LB 900, § 744; Laws 1998, LB 1219, § 19; Laws 2018, LB377, § 72.  
Operative date January 1, 2019.

**79-1099 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-10,100 Schoolhouse; erection or improvement; equipment; vote required to approve.**

The school board or board of education, upon being satisfied that all the requirements of section 79-1098 have been substantially complied with and that fifty-five percent of all votes cast at the election under such section are in favor of such tax, shall enter such proposition and all the proceedings had thereon upon the records of the school district and shall certify the special tax levy to the county clerk as other tax levies.

**Source:** Laws 1935, c. 170, § 3, p. 624; C.S.Supp.,1941, § 79-135; R.S. 1943, § 79-146; Laws 1949, c. 256, § 63, p. 713; R.S.1943, (1994), § 79-424; Laws 1996, LB 900, § 746; Laws 2018, LB377, § 73.  
Operative date January 1, 2019.

**79-10,101 Schoolhouse; erection or improvement; equipment; tax fund; transfer; limitation upon use; investment.**

The sum levied and collected under section 79-10,100 shall (1) constitute a special fund for the purposes for which it was voted, (2) not be used for any other purpose unless otherwise authorized by a fifty-five percent majority vote of the legal voters of the school district cast at the election under section 79-1098, (3) be paid over to the county treasurer of the county in which the administrative office of such school district is located, (4) be kept by the county treasurer and treasurer of the school district separate and apart from other district funds, and (5) be subject to withdrawal as provided in section 79-587. Any portion of such sum so levied and collected, the expenditure of which is not required to effectuate the purposes for which such sum was voted, may be transferred by the school board, at any regular or special meeting by the vote of a majority of the members attending, to the general fund of the district. All funds received by the district treasurer for such purpose shall be immediately invested by such treasurer in United States Government bonds or in such securities in which the state investment officer may invest the permanent school funds during the accumulation of such sinking fund.

**Source:** Laws 1935, c. 170, § 4, p. 625; C.S.Supp.,1941, § 79-136; R.S. 1943, § 79-147; Laws 1949, c. 256, § 64, p. 713; Laws 1969, c. 50, § 2, p. 270; R.S.1943, (1994), § 79-425; Laws 1996, LB 900, § 747; Laws 1997, LB 345, § 35; Laws 2018, LB377, § 74.  
Operative date January 1, 2019.

**79-10,103 Real property; lease or acquisition; located outside of district; purpose; election; when.**

(1) The school board of any school district may lease, purchase, acquire, own, manage, and hold title to real property which is located outside of its school district for laboratory, recreation, camping, or educational facilities, except that any purchase costing more than five thousand dollars by any school district shall be submitted to a vote of the legal voters in that school district seeking to acquire the property.

(2) The election provisions of this section do not apply when a school district which currently owns real property outside the school district desires to lease, purchase, acquire, own, manage, and hold title to additional real property located contiguous to such property for laboratory, recreation, camping, or educational facilities.

**Source:** Laws 1965, c. 511, § 1, p. 1632; Laws 1975, LB 303, § 1; R.S.1943, (1994), § 79-4,153; Laws 1996, LB 900, § 749; Laws 1997, LB 345, § 36; Laws 2018, LB377, § 75.  
Operative date January 1, 2019.

**79-10,107 School district property; use; lease authorized.**

(1) The school board or board of education of any school district may permit the use, upon such terms and conditions as it determines, of any school district property or portion thereof at times when it is not needed for school district use.

(2) If the school board or board of education of any school district determines that any school district property or portion thereof is not currently needed for the use of the school district but may be needed for future use, the school board or board of education of any school district may lease such property, or portion thereof, upon such terms and conditions as it determines.

**Source:** Laws 1988, LB 1077, § 1; R.S.1943, (1994), § 79-4,142.01; Laws 1996, LB 900, § 753; Laws 2015, LB513, § 1.

**79-10,110 Health and safety modifications prior to April 19, 2016, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose; school board; powers and duties; hearing; tax levy authorized; issuance of bonds authorized.**

(1) Prior to April 19, 2016, after making a determination that an actual or potential environmental hazard or accessibility barrier exists, that a life safety code violation exists, or that expenditures are needed for indoor air quality or mold abatement and prevention within the school buildings or grounds under its control, a school board may make and deliver to the county clerk of such county in which any part of the school district is situated, not later than the date provided in section 13-508, an itemized estimate of the amounts necessary to be expended for the abatement of such environmental hazard, for accessibility barrier elimination, or for modifications for life safety code violations, indoor air quality, or mold abatement and prevention in such school buildings or grounds. The board shall designate the particular environmental hazard abatement project, accessibility barrier elimination project, or modification for life safety code violations, indoor air quality, or mold abatement and prevention for which the tax levy provided for by this section will be expended, the period of years, which shall not exceed ten years, for which the tax will be levied for such

project, and the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance.

(2) Prior to April 19, 2016, after a public hearing, a school board may undertake any qualified capital purpose in any qualified zone academy under its control and may levy a tax as provided in this section to repay a qualified zone academy bond issued for such undertaking. The board shall designate: (a) The particular qualified capital purpose for which the qualified zone academy bond was issued and for which the tax levy provided for by this section will be expended; (b) the period of years for which the tax will be levied to repay such qualified zone academy bond, not exceeding the maturity term for such qualified zone academy bond established pursuant to federal law or, for any such bond issued prior to May 20, 2009, fifteen years; and (c) the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(3) Prior to April 19, 2016, after a public hearing, a school board may undertake any American Recovery and Reinvestment Act of 2009 purpose and may levy a tax to repay any American Recovery and Reinvestment Act of 2009 bond issued for such undertaking. The board shall designate: (a) The American Recovery and Reinvestment Act of 2009 purpose for which the American Recovery and Reinvestment Act of 2009 bond will be issued and for which the tax levy provided by this section will be expended; (b) the period of years for which the tax will be levied to repay such American Recovery and Reinvestment Act of 2009 bond, not exceeding the maturity term for the type of American Recovery and Reinvestment Act of 2009 bond established pursuant to federal law or, if no such term is established, thirty years; and (c) the estimated amount of the levy for each year of such period based on the taxable valuation of the district at the time of issuance. Prior to the public hearing, the school board shall prepare an itemized estimate of the amounts necessary to be expended for the American Recovery and Reinvestment Act of 2009 purpose. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(4) Prior to April 19, 2016, the board may designate more than one project under subsection (1) of this section, more than one qualified capital purpose under subsection (2) of this section, or more than one American Recovery and Reinvestment Act of 2009 purpose under subsection (3) of this section and levy a tax pursuant to this section for each such project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each such levy will not exceed the limitations specified in this section. Each levy for a project, a qualified capital purpose, or an American Recovery and Reinvestment Act of 2009 purpose which is authorized by this section may be imposed for such duration as the board specifies, notwithstanding the contemporaneous existence or subsequent imposition of any other levy for another project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose imposed pursuant to this section and notwithstanding the subsequent issuance by the district of bonded indebtedness payable from its general fund levy.

(5) The county clerk shall levy such taxes, not to exceed five and one-fifth cents per one hundred dollars of taxable valuation on the taxable property of the district necessary to (a) cover the environmental hazard abatement or accessibility barrier elimination project costs or costs for modification for life safety code violations, indoor air quality, or mold abatement and prevention itemized by the board pursuant to subsection (1) of this section and (b) repay any qualified zone academy bonds or American Recovery and Reinvestment Act of 2009 bonds pursuant to subsection (2) or (3) of this section. Such taxes shall be collected by the county treasurer at the same time and in the same manner as county taxes are collected and when collected shall be paid to the treasurer of the district and used to cover the project costs.

(6) Each board which submits an itemized estimate shall establish an environmental hazard abatement and accessibility barrier elimination project account, a life safety code modification project account, an indoor air quality project account, or a mold abatement and prevention project account, each board which undertakes a qualified capital purpose shall establish a qualified capital purpose undertaking account, within the qualified capital purpose undertaking fund, and each board which undertakes an American Recovery and Reinvestment Act of 2009 purpose shall establish an American Recovery and Reinvestment Act of 2009 purpose undertaking account. Taxes collected pursuant to this section shall be credited to the appropriate account to cover the project or undertaking costs. Such estimates may be presented to the county clerk and taxes levied accordingly.

(7) For purposes of this section:

(a) Abatement includes, but is not limited to, any inspection and testing regarding environmental hazards, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate environmental hazards, any removal or encapsulation of environmentally hazardous material or property, any related restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate environmental hazards in the school buildings or on the school grounds under the board's control, except that abatement does not include the encapsulation of any material containing more than one percent friable asbestos;

(b) Accessibility barrier means anything which impedes entry into, exit from, or use of any building or facility by all people;

(c) Accessibility barrier elimination includes, but is not limited to, inspection for and removal of accessibility barriers, maintenance to reduce, lessen, put an end to, diminish, control, dispose of, or eliminate accessibility barriers, related restoration or replacement of facilities or property, any related architectural and engineering services, and any other action to eliminate accessibility barriers in the school buildings or grounds under the board's control;

(d) American Recovery and Reinvestment Act of 2009 bond means any type or form of bond permitted by the federal American Recovery and Reinvestment Act of 2009, as such act or bond may be amended and supplemented, including the federal Hiring Incentives to Restore Employment Act, as amended and supplemented, for use by schools, except qualified zone academy bonds;

(e) American Recovery and Reinvestment Act of 2009 purpose means any construction of a new public school facility or the acquisition of land on which such a facility is to be constructed or any expansion, rehabilitation, moderniza-

tion, renovation, or repair of any existing school facilities financed in whole or in part with an American Recovery and Reinvestment Act of 2009 bond;

(f) Environmental hazard means any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety if such substance has been declared hazardous by a federal or state statute, rule, or regulation;

(g) Modification for indoor air quality includes, but is not limited to, any inspection and testing regarding indoor air quality, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate indoor air quality problems, any related restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate indoor air quality problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(h) Modification for life safety code violation includes, but is not limited to, any inspection and testing regarding life safety codes, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate life safety hazards, any related restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate life safety hazards in new or existing school buildings or on school grounds under the control of a school board;

(i) Modification for mold abatement and prevention includes, but is not limited to, any inspection and testing regarding mold abatement and prevention, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate mold problems, any related restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate mold problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(j) Qualified capital purpose means (i) rehabilitating or repairing the public school facility in which the qualified zone academy is established or (ii) providing equipment for use at such qualified zone academy;

(k) Qualified zone academy has the meaning found in (i) 26 U.S.C. 1397E(d)(4), as such section existed on October 3, 2008, for qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(d)(1), as such section existed on October 4, 2008, for qualified zone academy bonds issued on or after such date;

(l) Qualified zone academy allocation means the allocation of the qualified zone academy bond limitation by the State Department of Education to the qualified zone academies pursuant to (i) 26 U.S.C. 1397E(e)(2), as such section existed on October 3, 2008, for allocations relating to qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(c)(2), as such section existed on October 4, 2008, for allocations relating to qualified zone academy bonds issued on or after such date; and

(m) Qualified zone academy bond has the meaning found in (i) 26 U.S.C. 1397E(d)(1), as such section existed on October 3, 2008, for such bonds issued on or before such date, and (ii) 26 U.S.C. 54E(a), as such section existed on and after October 4, 2008, for such bonds issued on or after such date, as such section or bonds may be amended or supplemented.

(8) Accessibility barrier elimination project costs includes, but is not limited to, inspection, maintenance, accounting, emergency services, consultation, or any other action to reduce or eliminate accessibility barriers.

(9)(a) For the purpose of paying amounts necessary for the abatement of environmental hazards, for accessibility barrier elimination, for modifications for life safety code violations, indoor air quality, or mold abatement and prevention, for a qualified capital purpose, or for an American Recovery and Reinvestment Act of 2009 purpose, the board may borrow money, establish a sinking fund, and issue bonds and other evidences of indebtedness of the district, which bonds and other evidences of indebtedness shall be secured by and payable from an irrevocable pledge by the district of amounts received in respect of the tax levy provided for by this section and any other funds of the district available therefor. Bonds issued for a qualified capital purpose or an American Recovery and Reinvestment Act of 2009 purpose shall be limited to the type or types of bonds authorized for each purpose in subsections (2) and (3) of this section, respectively. Bonds and other evidences of indebtedness issued by a district pursuant to this subsection shall not constitute a general obligation of the district or be payable from any portion of its general fund levy.

(b) A district may exceed the maximum levy of five and one-fifth cents per one hundred dollars of taxable valuation authorized by subsection (5) of this section in any year in which (i) the taxable valuation of the district is lower than the taxable valuation in the year in which the district last issued bonds pursuant to this section and (ii) such maximum levy is insufficient to meet the combined annual principal and interest obligations for all bonds issued pursuant to this section. The amount generated from a district's levy in excess of the maximum levy upon the taxable valuation of the district shall not exceed the combined annual principal and interest obligations for such bonds minus the amount generated by levying the maximum levy upon the taxable valuation of the district and minus any federal payments or subsidies associated with such bonds.

(10) The total principal amount of bonds for modifications to correct life safety code violations, for indoor air quality problems, for mold abatement and prevention, or for an American Recovery and Reinvestment Act of 2009 purpose which may be issued pursuant to this section shall not exceed the total amount specified in the itemized estimate described in subsections (1) and (3) of this section.

(11) The total principal amount of qualified zone academy bonds which may be issued pursuant to this section for qualified capital purposes with respect to a qualified zone academy shall not exceed the qualified zone academy allocation granted to the board by the department. The total amount that may be financed by qualified zone academy bonds pursuant to this section for qualified purposes with respect to a qualified zone academy shall not exceed seven and one-half million dollars statewide in a single year. In any year that the Nebraska qualified zone academy allocations exceed seven and one-half million dollars for qualified capital purposes to be financed with qualified zone academy bonds issued pursuant to this section, (a) the department shall reduce such allocations proportionally such that the statewide total for such allocations equals seven and one-half million dollars and (b) the difference between the Nebraska allocation and seven and one-half million dollars shall be available to qualified zone academies for requests that will be financed with qualified zone academy bonds issued without the benefit of this section.

Nothing in this section directs the State Department of Education to give any preference to allocation requests that will be financed with qualified zone academy bonds issued pursuant to this section.

(12) The State Department of Education shall establish procedures for allocating bond authority to school boards as may be necessary pursuant to an American Recovery and Reinvestment Act of 2009 bond.

**Source:** Laws 1983, LB 624, § 2; Laws 1985, LB 405, § 1; Laws 1987, LB 212, § 1; Laws 1988, LB 1073, § 19; Laws 1989, LB 487, § 8; Laws 1989, LB 706, § 9; Laws 1992, LB 1001, § 19; Laws 1993, LB 348, § 22; Laws 1994, LB 1310, § 6; R.S.1943, (1994), § 79-4,207; Laws 1996, LB 900, § 756; Laws 1996, LB 1044, § 817; Laws 1997, LB 710, § 24; Laws 1999, LB 813, § 34; Laws 2001, LB 240, § 1; Laws 2001, LB 797, § 42; Laws 2002, LB 568, § 10; Laws 2003, LB 67, § 23; Laws 2003, LB 540, § 10; Laws 2009, LB545, § 24; Laws 2009, LB549, § 37; Laws 2010, LB1071, § 25; Laws 2012, LB633, § 6; Laws 2016, LB959, § 9; Laws 2018, LB377, § 76.

Operative date January 1, 2019.

**79-10,110.01 Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose bonds; refunding bonds; authorized; conditions.**

(1) If a school board has issued or shall issue bonds pursuant to section 79-10,110 or 79-10,110.02 and such bonds or any part of such bonds are unpaid, are a legal liability against the school district governed by such school board, and are bearing interest, the school board may issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the date of maturity or the redemption date of such bonds. Such school board may include various series and issues of the outstanding bonds in a single issue of refunding bonds and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the school board determines to be in the best interests of the school district. The proceeds derived from the sale of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, the school board may enter into a contract with any bank or trust company within or without the state with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. All bonds issued under this section shall be redeemable at such times and under such conditions as the school board shall determine at the time of issuance.

(2) Any outstanding bonds or other evidences of indebtedness issued by a school board for which sufficient funds or obligations of or guaranteed by the United States Government have been pledged and set aside in safekeeping to be applied for the complete payment of such bonds or other evidences of indebtedness at maturity or upon redemption prior to maturity, interest thereon, and

redemption premium, if any, shall not be considered as outstanding and unpaid.

(3) Each refunding bond issued under this section shall state on the bond (a) the object of its issue, (b) this section or the sections of the law under which such issue was made, including a statement that the issue is made in pursuance of such section or sections, and (c) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

(4) The refunding bonds shall be paid and the levy made and the tax collected for their payment in the same manner and under the same authorization for levy of taxes as applied for the bonds being refunded, in accordance with section 79-10,110 or 79-10,110.02.

**Source:** Laws 2012, LB633, § 7; Laws 2016, LB959, § 10.

**79-10,110.02 Health and safety modifications on and after April 19, 2016; school board; powers and duties; tax levy authorized; issuance of bonds authorized.**

(1) On and after April 19, 2016, the school board of any school district may make a determination that an additional property tax levy is necessary for a specific abatement project to address an actual or potential environmental hazard, accessibility barrier, life safety code violation, life safety hazard, or mold which exists within one or more existing school buildings or the school grounds of existing school buildings controlled by the school district. Such determination shall not include abatement projects related to the acquisition of new property, the construction of a new building, the expansion of an existing building, or the remodeling of an existing building for purposes other than the abatement of environmental hazards, accessibility barriers, life safety code violations, life safety hazards, or mold. Upon such determination, the school board may, not later than the date provided in section 13-508, make and deliver to the county clerk of such county in which any part of the school district is situated an itemized estimate of the amounts necessary to be expended for such abatement project, any insurance proceeds or other anticipated funds that will be received by the school district related to the abatement project, the period of years for which the property tax will be levied for such project, and the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance. The period of years for such levy shall not exceed ten years and the levy for such project when combined with all other levies pursuant to this section and section 79-10,110 shall not exceed three cents per one hundred dollars of taxable valuation. Nothing in this section shall affect levies pursuant to section 79-10,110.

(2) The county clerk shall levy such taxes and such taxes shall be collected by the county treasurer at the same time and in the same manner as county taxes are collected and when collected shall be paid to the treasurer of the district. A separate abatement project account shall be established for each project by the school district. Taxes collected pursuant to this section shall be credited to the appropriate account to cover the project costs.

(3) For purposes of this section:

(a) Abatement includes, but is not limited to, any related inspection and testing, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, eliminate, or remove the issue causing the need for abatement, any related restoration or replacement of material or property,



any related architectural and engineering services, and any other action to reduce or eliminate the issue causing the need for abatement in existing school buildings or on the school grounds of existing school buildings under the board's control;

(b) Accessibility barrier means anything which impedes entry into, exit from, or use of any building or facility by all people; and

(c) Environmental hazard means any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety if such substance has been declared hazardous by a federal or state statute, rule, or regulation.

(4) For the purpose of paying amounts necessary for the abatement project, the board may borrow money, establish a sinking fund, and issue bonds and other evidences of indebtedness of the district, which bonds and other evidences of indebtedness shall be secured by and payable from an irrevocable pledge by the district of amounts received in respect of the tax levy provided for by this section and any other funds of the district available therefor. Bonds and other evidences of indebtedness issued by a district pursuant to this subsection shall not constitute a general obligation of the district or be payable from any portion of its general fund levy. The total principal amount of bonds for abatement projects pursuant to this section shall not exceed the total amount specified in the itemized estimate described in subsection (1) of this section.

(5) A district may exceed the maximum levy of three cents per one hundred dollars of taxable valuation authorized by this section in any year in which (a) the taxable valuation of the district is lower than the taxable valuation in the year in which the district last issued bonds pursuant to this section and (b) such maximum levy is insufficient to meet the combined annual principal and interest obligations for all bonds issued pursuant to this section and section 79-10,110. The amount generated from a district's levy in excess of three cents per one hundred dollars of taxable valuation shall not exceed the combined annual principal and interest obligations for such bonds minus the amount generated by levying three cents per one hundred dollars of taxable valuation.

**Source:** Laws 2016, LB959, § 11; Laws 2018, LB377, § 77.  
Operative date January 1, 2019.

**79-10,111 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-10,113 Repealed. Laws 2018, LB377, § 87.**  
Operative date January 1, 2019.

**79-10,114 Class III or IV school district; property; sale; proceeds of sale; use.**

No school property of any kind belonging to any Class III or IV school district shall be sold by the school board or board of education except at a regular meeting of the board and with an affirmative recorded vote of at least two-thirds of all the members of the board. Proceeds of sale of school property sold as provided in this section may be held separately from other funds of the school district and may be used for any school purpose as the board may determine, including, but not limited to, acquiring sites for school buildings or teacherages and purchasing existing buildings for use as school buildings or teacherages, including the sites upon which such buildings are located, and the

erection, alteration, equipping, and furnishing of school buildings or teacherages.

**Source:** Laws 1881, c. 78, subdivision XIV, § 21, p. 383; R.S.1913, § 6968; C.S.1922, § 6602; C.S.1929, § 79-2520; R.S.1943, § 79-2523; Laws 1949, c. 256, § 208, p. 759; Laws 1971, LB 524, § 1; Laws 1993, LB 348, § 24; R.S.1943, (1994), § 79-521; Laws 1996, LB 900, § 760; Laws 2018, LB377, § 78.  
Operative date January 1, 2019.

**79-10,117 Class III school district; teacherage; site; purchase or lease; powers of voters at election or annual or special meeting; tax.**

The legal voters of any Class III school district have the power, at an election or at any annual or special meeting, to (1) direct the purchasing or leasing of any appropriate site and the building, hiring, or purchasing of a teacherage for the purpose of providing housing facilities for the school employees of the district, (2) determine the amount necessary to be expended for such purposes the succeeding year, and (3) vote on a tax on the property of the district for the payment of the amount.

**Source:** Laws 1953, c. 300, § 3, p. 1011; Laws 1959, c. 401, § 1, p. 1361; R.S.1943, (1994), § 79-541; Laws 1996, LB 900, § 763; Laws 1997, LB 345, § 41; Laws 2018, LB377, § 79.  
Operative date January 1, 2019.

**79-10,118 Class III school district; teacherage; tax; election.**

A tax to establish a special fund for the building, hiring, or purchasing of a teacherage for the purpose of providing housing facilities for the school employees of any Class III district may be levied when authorized by fifty-five percent of the legal voters voting on the proposition. The notice of the proposal to establish such special fund shall include the sum to be raised or the amount of the tax to be levied, the period of years, and the time of its taking effect. If fifty-five percent of the legal voters voting at any such election vote in favor of the proposition, the result of such election shall be certified to the county board which, upon being satisfied that all the requirements have been substantially complied with, shall cause the proceedings to be entered upon the record of the county board and shall make an order that the levy be made in accordance with the election result and collected as other taxes.

**Source:** Laws 1953, c. 300, § 4, p. 1011; R.S.1943, (1994), § 79-542; Laws 1996, LB 900, § 764; Laws 1997, LB 345, § 42; Laws 2018, LB377, § 80.  
Operative date January 1, 2019.

**79-10,120 School district; board of education; special fund for sites and buildings; levy of taxes.**

The school board or board of education of any school district may establish a special fund for purposes of acquiring sites for school buildings or teacherages, purchasing existing buildings for use as school buildings or teacherages, including the sites upon which such buildings are located, and the erection, alteration, equipping, and furnishing of school buildings or teacherages and additions to school buildings for elementary and high school grades and for no other purpose. The fund shall be established from the proceeds of an annual

levy, to be determined by the board, of not to exceed fourteen cents on each one hundred dollars upon the taxable value of all taxable property in the district which shall be in addition to any other taxes authorized to be levied for school purposes. Such tax shall be levied and collected as are other taxes for school purposes.

**Source:** Laws 1963, c. 462, § 1, p. 1490; R.R.S.1943, § 79-811; Laws 1969, c. 49, § 4, p. 268; Laws 1979, LB 187, § 237; R.S.1943, (1987), § 79-548.01; Laws 1991, LB 511, § 53; Laws 1992, LB 245, § 54; Laws 1992, LB 719A, § 190; R.S.1943, (1994), § 79-547.04; Laws 1996, LB 900, § 766; Laws 2006, LB 1024, § 100; Laws 2007, LB641, § 31; Laws 2016, LB1067, § 53; Laws 2018, LB377, § 81.

Operative date January 1, 2019.

**79-10,121 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-10,122 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-10,123 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-10,124 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-10,125 Repealed. Laws 2018, LB377, § 87.**

Operative date January 1, 2019.

**79-10,126 Class V school district; school fiscal year 2017-18 and thereafter; school tax; additional levy; funds established.**

For school fiscal year 2017-18 and each school fiscal year thereafter, each Class V school district shall establish (1) for the general operation of the schools, such fund as will result from an annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the board of education determines to be necessary for such purpose, (2) a fund resulting from an annual amount of tax to be determined by the board of education of not to exceed fourteen cents on each one hundred dollars upon the taxable value of all the taxable property in the district for the purpose of acquiring sites of school buildings and the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, which tax levy shall be used for no other purposes, and (3) a further fund resulting from an annual amount of tax to be determined by the board of education to pay interest on and retiring, funding, or servicing of bonded indebtedness of the district.

**Source:** Laws 1939, c. 112, § 1, p. 485; C.S.Supp.,1941, § 79-2722; R.S.1943, § 79-2724; Laws 1945, c. 214, § 3, p. 629; Laws 1947, c. 298, § 3, p. 914; Laws 1949, c. 256, § 266, p. 780; Laws 1951, c. 285, § 2, p. 952; Laws 1953, c. 307, § 2, p. 1023; Laws 1955, c. 320, § 3, p. 989; Laws 1959, c. 407, § 2, p. 1370; Laws 1969, c. 145, § 44, p. 699; Laws 1971, LB 292, § 20; Laws 1979, LB

187, § 241; Laws 1992, LB 719A, § 192; R.S.1943, (1994), § 79-1007.02; Laws 1996, LB 900, § 772; Laws 2006, LB 1024, § 101; Laws 2016, LB1067, § 54.

**79-10,126.01 Class V school district; school fiscal years prior to school fiscal year 2017-18; school tax; additional levy; funds established.**

For school fiscal years prior to school fiscal year 2017-18, each Class V school district shall establish (1) for the general operation of the schools, such fund as will result from distributions pursuant to section 79-1073 from the learning community levy and any annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the board of education determines to be necessary for such purpose and as authorized pursuant to subdivision (2)(c) of section 77-3442, (2) for the purpose of acquiring sites of school buildings and the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, a fund as will result from distributions from any annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the school board determines to be necessary for such purpose and as authorized pursuant to subdivision (2)(c) of section 77-3442, which fund shall be used for no other purposes, and (3) a further fund resulting from an annual amount of tax to be determined by the board of education to pay interest on and for retiring, funding, or servicing of bonded indebtedness of the district.

**Source:** Laws 2006, LB 1024, § 102; Laws 2007, LB641, § 32; Laws 2016, LB1067, § 55.

(g) SUMMER FOOD SERVICE PROGRAM

**79-10,141 Summer Food Service Program; legislative intent; department; duties; preference for grants; applications.**

(1) Because children are susceptible to hunger in the summertime, resulting in negative health effects, the Legislature intends, as a state nutrition and health policy, that the State of Nebraska's participation in the Summer Food Service Program of the United States Department of Agriculture be strengthened where it is needed to provide adequate nutrition for children.

(2) To encourage participation and utilization of the Summer Food Service Program, the department shall:

(a) Provide information to sponsors concerning the benefits and availability of the Summer Food Service Program; and

(b) Award grants of up to fifteen thousand dollars on a competitive basis to sponsors approved by the department. Grants awarded under this section may be used for nonrecurring expenses incurred in initiating or expanding services under the Summer Food Service Program, including, but not limited to, the acquisition of equipment, salaries of staff, training of staff in new capacities, outreach efforts to publicize new or expanded services under the Summer Food Service Program, minor alterations to accommodate new equipment, computer point-of-service systems for food service, and the purchase of vehicles for transporting food to sites. Funds may be expended up to the full cost of a qualifying expense incurred by a sponsor in initiating or expanding the services under the Summer Food Service Program, and if the funds are expended solely for the benefit of child nutrition programs administered by the department, no

proration of the expense shall be required. Funds shall not be used for food, computers, except point-of-service systems, or capital outlay. The total amount of grants awarded under this section shall be limited to one hundred thousand dollars per fiscal year.

(3) In awarding grants under this section, the department shall give preference in the following order of priority to:

(a) Sponsors located within the boundaries of school districts in which fifty percent or more of the students apply and qualify for free and reduced-price lunches or located within the boundaries of a census tract in which fifty percent or more of the children fall under the poverty threshold as defined by the United States Department of Agriculture;

(b) Sponsors in which health or education activities are emphasized; and

(c) Sponsors that participate in the Summer Food Service Program at the time of grant application.

(4) Sponsors may apply for grants under this section by:

(a) Submitting to the department a plan to start or expand services under the Summer Food Service Program;

(b) Agreeing to operate the Summer Food Service Program for a period of not less than two years; and

(c) Assuring that the expenditure of funds from state and local resources for the maintenance of other child nutrition programs administered by the department shall not be diminished as a result of grants received under this section.

**Source:** Laws 2012, LB1090, § 2; Laws 2017, LB512, § 18.

#### (h) FREE OR REDUCED-PRICE MEALS

**79-10,143 Parent or guardian; provide information regarding qualification; school district; duties.**

A parent or guardian of any student enrolled in, or in the process of enrolling in, any school district in the state may voluntarily provide information on any application submitted pursuant to Nebraska law, rules, and regulations regarding the applicant's potential to meet the qualifications for free or reduced-price lunches solely for determining eligibility pursuant to subsection (4) of section 79-238, subsection (2) of section 79-241, section 79-2,131, section 79-2,133, subsection (2) of section 79-611, subdivision (1)(c) and subsection (3) of section 79-2110, or section 85-2104. Each school district shall process information provided pursuant to this section in the same manner as the district would to determine the qualification status of the student for free or reduced-price meals. Each school district shall comply with the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as such act and section existed on January 1, 2015, and regulations adopted thereunder with regard to any information collected pursuant to this section. If no such information is provided pursuant to this section or on an application for free or reduced-price meals, the student shall be presumed not to qualify for free or reduced-price lunches.

**Source:** Laws 2015, LB525, § 3; Laws 2016, LB1066, § 20.

## (i) STATE DEPARTMENT OF EDUCATION DUTIES

**79-10,144 Community eligibility provision; state aid and federal funds; State Department of Education; duties.**

The State Department of Education shall promote the community eligibility provision to schools and school districts eligible to participate, and such promotion shall include, but is not limited to, providing official departmental guidance regarding the options available to schools and school districts for implementation and options for school districts in maintaining state aid and federal funds.

**Source:** Laws 2016, LB1066, § 23.

## (j) LEARNING COMMUNITY TRANSITION AID

**79-10,145 Learning community transition aid; calculation.**

(1) For school fiscal year 2017-18, the department shall, based on data for school fiscal year 2016-17, calculate the amount of learning community transition aid, if any, to be paid from the Nebraska Education Improvement Fund to each school district that is a member of a learning community which levied a common levy for member school districts prior to school fiscal year 2017-18. Learning community transition aid for each such district shall be calculated by:

(a) Recalculating the 2016-17 state aid for each member school district as if the district were not a member of the learning community using the same data that was used in the certification pursuant to section 79-1022 to determine the calculated 2016-17 individual state aid for each member school district;

(b) Multiplying the aggregate taxable valuation for all member school districts for the 2016 tax year by the ratio of ninety-five cents per one hundred dollars of taxable valuation and multiplying the result by ninety-nine percent to determine the calculated 2016-17 common levy receipts;

(c) Dividing the calculated 2016-17 common levy receipts among member school districts proportionally based on the difference of the formula need calculated pursuant to section 79-1007.11 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the 2016-17 school fiscal year to determine the district share of the calculated 2016-17 common levy receipts for each member district;

(d) Adding the district share of the calculated 2016-17 common levy receipts to the state aid certified pursuant to section 79-1022 for the 2016-17 school fiscal year to determine the calculated 2016-17 common levy resources total for each member school district;

(e) Multiplying the taxable valuation for each member school district for the 2016 tax year by the ratio of ninety-five cents per one hundred dollars of taxable valuation and multiplying the result by ninety-nine percent to determine the calculated 2016-17 individual levy receipts for each member school district;

(f) Adding the calculated 2016-17 individual levy receipts to the calculated 2016-17 individual state aid to determine the calculated 2016-17 individual district resources total for each member school district; and

(g) Multiplying the difference of the calculated 2016-17 common levy resources total minus both the calculated 2016-17 individual district resources

total and the community achievement plan aid calculated for school fiscal year 2017-18 pursuant to section 79-1005 for each member school district by fifty percent to equal the 2017-18 learning community transition aid for each member school district for which the calculated common levy resources total is greater than such sum of the calculated individual district resources total plus the community achievement plan aid.

(2) For school fiscal year 2018-19, the department shall, based on data for school fiscal year 2017-18, calculate the amount of learning community transition aid, if any, to be paid from the Nebraska Education Improvement Fund to each school district that is a member of a learning community which levied a common levy for member school districts prior to school fiscal year 2017-18. Learning community transition aid for each such district shall be calculated by:

(a) Recalculating the 2017-18 state aid for each member school district as if the district continued to be subject to a learning community general fund common levy and without any poverty allowance adjustment pursuant to section 79-1007.06 or community achievement aid pursuant to section 79-1005 using the same data that was used in the certification pursuant to section 79-1022 to determine the calculated 2017-18 common levy formula need and calculated 2017-18 common levy state aid for each member school district;

(b) Multiplying the aggregate taxable valuation for all member school districts for the 2017 tax year by the ratio of ninety-five cents per one hundred dollars of taxable valuation and multiplying the result by ninety-nine percent to determine the calculated 2017-18 common levy receipts;

(c) Dividing the calculated 2017-18 common levy receipts among member school districts proportionally based on the difference of the calculated common levy formula need minus the sum of the calculated 2017-18 common levy state aid and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the 2017-18 school fiscal year to determine the district share of the calculated 2017-18 common levy receipts for each member district;

(d) Adding the district share of the calculated 2017-18 common levy receipts to the calculated 2017-18 common levy state aid to determine the calculated 2017-18 common levy resources total for each member school district;

(e) Multiplying the taxable valuation for each member school district for the 2017 tax year by the ratio of ninety-five cents per one hundred dollars of taxable valuation and multiplying the result by ninety-nine percent to determine the calculated 2017-18 individual levy receipts for each member school district;

(f) Adding the calculated 2017-18 individual levy receipts to the state aid certified pursuant to section 79-1022 for school fiscal year 2017-18 to determine the calculated 2017-18 individual district resources total for each member school district; and

(g) Multiplying the difference between the calculated 2017-18 common levy resources total minus the calculated 2017-18 individual district resources total for each member school district by twenty-five percent to equal the 2018-19 learning community transition aid for each member school district for which the calculated common levy resources total is greater than the calculated individual district resources total.

(3) Learning community transition aid shall not be considered in the calculation of formula resources pursuant to section 79-1017.01.

**Source:** Laws 2016, LB1067, § 42; Laws 2017, LB409, § 4.

(k) SWIMMING POOL

**79-10,146 Swimming pool; personnel.**

Every swimming pool owned, rented, leased, or otherwise used by a school district for practice, competition, or any other school function shall have at least one person present during such use who is currently certified by a nationally recognized aquatic training program in first aid, cardiopulmonary resuscitation, and drowning risk prevention.

**Source:** Laws 2017, LB512, § 4.

**ARTICLE 11**

**SPECIAL POPULATIONS AND SERVICES**

(a) EARLY CHILDHOOD EDUCATION

Section

- 79-1104. Before-and-after-school or prekindergarten services; transportation services; school board; powers and duties.
- 79-1104.02. Early Childhood Education Endowment Cash Fund; use; grants; program requirements.

(b) GIFTED CHILDREN AND LEARNERS WITH HIGH ABILITY

- 79-1108.02. Learners with high ability; curriculum programs; funding.

(c) SPECIAL EDUCATION

SUBPART (i)—SPECIAL EDUCATION ACT

- 79-1118.01. Disability, defined; diagnosis.
- 79-1140. School district; amount paid to service agency; determination.
- 79-1144. Children with disabilities; education; funds; channeled through office of State Department of Education; expenditures authorized.

(d) BRIDGE PROGRAMS

- 79-1189. Repealed. Laws 2018, LB669, § 1.
- 79-1190. Repealed. Laws 2018, LB669, § 1.
- 79-1191. Repealed. Laws 2018, LB669, § 1.
- 79-1192. Repealed. Laws 2018, LB669, § 1.
- 79-1193. Repealed. Laws 2018, LB669, § 1.
- 79-1194. Repealed. Laws 2018, LB669, § 1.
- 79-1195. Repealed. Laws 2018, LB669, § 1.
- 79-1196. Repealed. Laws 2018, LB669, § 1.

(m) STUDENT ACHIEVEMENT COORDINATOR

- 79-11,155. Student achievement coordinator; appointment; qualifications; duties.

(n) DYSLEXIA

- 79-11,156. Student; receive evidence-based structured literacy instruction.
- 79-11,157. State Department of Education; duties.
- 79-11,158. Teacher education program; include instruction in dyslexia.

(a) EARLY CHILDHOOD EDUCATION

**79-1104 Before-and-after-school or prekindergarten services; transportation services; school board; powers and duties.**

(1) Any school board in its discretion may (a) establish and financially support programs providing before-and-after-school or prekindergarten ser-



vices, to which attendance shall be voluntary and which the board may deem beneficial to the education of prekindergarten or school-age children and (b) provide or financially support transportation for children to, from, or to and from programs as defined in section 71-1910. The board may charge a fee, not to exceed the actual cost, for providing such programs and services but may waive such fee on the basis of need. This section does not allow any school district to fail to meet its responsibilities under the Special Education Act.

(2) Prekindergarten programs established by school boards or educational service units shall be approved by the State Department of Education subject to regulations adopted and promulgated by the State Board of Education and may include such components as (a) the utilization of appropriately qualified staff, (b) an appropriate child-to-staff ratio, (c) appropriate group size, (d) compliance with minimum health and safety standards, (e) appropriate facility size and equipment, (f) a strong family development and support component, (g) developmentally and culturally appropriate curriculum, practices, and assessment, (h) well-defined language development and early literacy emphasis, and (i) a plan for ongoing professional development of staff, all in accordance with sound early childhood educational practice, research, and evaluation. All teachers and administrators in prekindergarten programs established pursuant to this section shall hold a valid certificate or permit issued pursuant to sections 79-806 to 79-815, except that the State Board of Education may adopt and promulgate rules and regulations that exempt a prekindergarten program from the requirement for teachers and administrators in prekindergarten programs to hold a valid certificate or permit if such program is in compliance with such rules and regulations.

**Source:** Laws 1996, LB 900, § 786; Laws 2001, LB 759, § 3; Laws 2003, LB 685, § 23; Laws 2006, LB 1256, § 3; Laws 2018, LB803, § 1. Effective date July 19, 2018.

#### Cross References

Special Education Act, see section 79-1110.

### **79-1104.02 Early Childhood Education Endowment Cash Fund; use; grants; program requirements.**

(1) The Early Childhood Education Endowment Cash Fund, consisting of the interest, earnings, and proceeds from the Early Childhood Education Endowment Fund and the earnings from the private endowment created by the endowment provider, funds transferred from the Education Innovation Fund pursuant to section 9-812, and any additional private donations made directly thereto, shall be used exclusively to provide funds for the Early Childhood Education Grant Program for at-risk children from birth to age three as set forth in this section.

(2) Grants provided by this section shall be to school districts and cooperatives of school districts for early childhood education programs for at-risk children from birth to age three, as determined by the board of trustees pursuant to criteria set forth by the board of trustees. School districts and cooperatives of school districts may establish agreements with other public and private entities to provide services or operate programs.

(3) Each program selected for a grant pursuant to this section may be provided a grant for up to one-half of the total budget of such program per year. Programs selected for grant awards may receive continuation grants

subject to the availability of funding and the submission of a continuation plan which meets the requirements of the board of trustees.

(4) Programs shall be funded across the state and in urban and rural areas to the fullest extent possible.

(5) Each program selected for a grant pursuant to this section shall meet the requirements described in subsection (2) of section 79-1103, except that the periodic evaluations of the program are to be specified by the board of trustees and the programs need not include continuity with programs in kindergarten and elementary grades and need not include instructional hours that are similar to or less than the instructional hours for kindergarten. The programs may continue to serve at-risk children who turn three years of age during the program year until the end of the program year, as specified by the board of trustees.

(6) The board of trustees may issue grants to early childhood education programs entering into agreements pursuant to subsection (2) of this section with child care providers if the child care provider enrolls in the quality rating and improvement system described in the Step Up to Quality Child Care Act prior to the beginning of the initial grant period. Child care providers shall participate in training approved by the Early Childhood Training Center which is needed for participation or advancement in the quality rating and improvement system.

(7) The board of trustees shall require child care providers in programs receiving grants under this section to obtain a step three rating or higher on the quality scale described in section 71-1956 within three years of the starting date of the initial grant period to continue funding the program. The board of trustees shall require the child care provider to maintain a step three rating or higher on such quality scale after three years from the starting date of the initial grant period to continue funding the program.

(8) If a child care provider fails to achieve or maintain a step three rating or higher on the quality scale described in such section after three years from the starting date of the initial grant period, the child care provider shall obtain and maintain the step three rating on such quality scale before any new or continuing grants may be issued for programs in which such child care provider participates.

(9) Any school district entering into agreements pursuant to subsection (2) of this section with child care providers must employ or contract with, either directly or indirectly, a program coordinator holding a certificate as defined in section 79-807.

(10) Up to ten percent of the total amount deposited in the Early Childhood Education Endowment Cash Fund each fiscal year may be reserved by the board of trustees for evaluation and technical assistance for the Early Childhood Education Grant Program with respect to programs for at-risk children from birth to age three.

**Source:** Laws 2006, LB 1256, § 5; Laws 2008, LB1153, § 5; Laws 2013, LB410, § 11; Laws 2013, LB495, § 3; Laws 2015, LB547, § 2.

**Cross References**

Step Up to Quality Child Care Act, see section 71-1952.

## (b) GIFTED CHILDREN AND LEARNERS WITH HIGH ABILITY

**79-1108.02 Learners with high ability; curriculum programs; funding.**

(1) The department shall distribute funds appropriated for purposes of this section to local systems as defined in section 79-1003 annually on or before October 15. The funds distributed pursuant to this section shall be distributed based on a pro rata share of the eligible costs submitted in grant applications.

(2) Local systems may apply to the department for base funds and matching funds pursuant to this section to be spent on approved accelerated or differentiated curriculum programs. Each eligible local system shall receive one-tenth of one percent of the appropriation as base funds plus a pro rata share of the remainder of the appropriation based on identified students participating in an accelerated or differentiated curriculum program, up to ten percent of the prior year's fall membership as defined in section 79-1003, as matching funds. Eligible local systems shall:

(a) Provide an approved accelerated or differentiated curriculum program for students identified as learners with high ability;

(b) Provide funds from other sources for the approved accelerated or differentiated curriculum program greater than or equal to fifty percent of the matching funds received pursuant to this subsection;

(c) Provide an accounting of the funds received pursuant to this section, funds required by subdivision (b) of this subsection, and the total cost of the program on or before August 1 of the year following the receipt of funds in a manner prescribed by the department, not to exceed one report per year; and

(d) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program in a manner prescribed by the department, not to exceed one report per year.

If a local system will not be providing the necessary matching funds pursuant to subdivision (b) of this subsection, the local system shall request a reduction in the amount received pursuant to this subsection such that the local system will be in compliance with such subdivision. Local systems not complying with the requirements of this subsection shall not be eligible local systems in the following year.

**Source:** Laws 1998, LB 1229, § 10; Laws 2011, LB333, § 15; Laws 2017, LB512, § 19; Laws 2018, LB377, § 82.  
Operative date January 1, 2019.

## (c) SPECIAL EDUCATION

## SUBPART (i)—SPECIAL EDUCATION ACT

**79-1118.01 Disability, defined; diagnosis.**

Disability means an impairment which causes a child to be identified as having at least one of the conditions defined in this section and causes such child to need special education and related services. For purposes of this section:

(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other character-

istics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance;

(2) Blind and visually impaired means partially seeing or blind, which visual impairment, even with correction, adversely affects a child's educational performance;

(3) Deaf means a hearing impairment which is so severe that processing linguistic information through hearing, with or without amplification, is impaired to the extent that educational performance is adversely affected;

(4) Deaf-blind means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that such impairments cannot be accommodated in special education programs solely for children who are deaf or blind;

(5) Developmental delay means either (a) a significant delay in function in one or more of the following areas: (i) Cognitive development; (ii) physical development; (iii) communication development; (iv) social or emotional development; or (v) adaptive behavior or skills development, or (b) a diagnosed physical or mental condition that has a high probability of resulting in a substantial delay in function in one or more of such areas;

(6) Dyslexia means a specific learning disability under subdivision (13) of this section that (a) is neurobiological in origin, (b) is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities, (c) typically results from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and effective classroom instruction, and (d) has secondary consequences that may include problems in reading comprehension and reduced reading experience that may impede growth of vocabulary and background knowledge;

(7)(a) Emotional disturbance means a condition in which a student exhibits one or more of the following characteristics over a long period of time and to a marked degree which adversely affects educational performance:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(b) Emotional disturbance includes schizophrenia but does not include social maladjustment unless a characteristic defined in subdivision (7)(a)(i) or (ii) of this section is also present;

(8) Hard of hearing means a hearing impairment, whether permanent or fluctuating, which adversely affects educational performance but is not included under the term deaf in subdivision (3) of this section;

(9) Intellectual disability means a condition in which a child exhibits significantly subaverage general intellectual functioning existing concurrently with

deficits in adaptive behavior and manifested during the developmental period which adversely affects educational performance;

(10) Multiple disabilities means concomitant impairments, such as intellectual disability-blind or intellectual disability-orthopedic impairment, the combination of which causes such severe educational problems that a child with such impairments cannot be accommodated in special education programs for one of the impairments. Multiple disabilities does not include deaf-blind;

(11) Orthopedic impairment means a severe orthopedic impairment which adversely affects a child's educational performance. Severe orthopedic impairments include impairments caused by (a) congenital anomaly, including, but not limited to, clubfoot or absence of a member, (b) disease, including, but not limited to, poliomyelitis or bone tuberculosis, or (c) other causes, including, but not limited to, cerebral palsy, amputations, and fractures and burns which cause contractures;

(12) Other health impaired means having limited strength, vitality, or alertness due to chronic or acute health problems, including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance;

(13) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Specific learning disability includes, but is not limited to, perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia;

(14) Speech-and-language-impaired means having a communication disorder such as stuttering, impaired articulation, language impairments, or voice impairment which adversely affects a child's educational performance; and

(15) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

The State Department of Education may group or subdivide the classifications of children with disabilities for the purpose of program description and reporting. The department shall establish eligibility criteria and age ranges for the disability classification of developmental delay.

**Source:** Laws 1987, LB 367, § 9; Laws 1993, LB 348, § 62; R.S.1943, (1994), § 79-3309; Laws 1996, LB 900, § 802; R.S.1943, (1996), § 79-1120; Laws 1997, LB 346, § 12; Laws 1999, LB 813, § 38; Laws 2013, LB23, § 45; Laws 2013, LB410, § 12; Laws 2014, LB967, § 22; Laws 2017, LB645, § 1.

#### **79-1140 School district; amount paid to service agency; determination.**

Except as provided in sections 79-232 to 79-246, each school district shall pay an amount equal to the average per pupil cost of the service agency of the preceding year or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child with a disability who is a resident of the district and is attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Health and Human Services, and any other service agency whose programs are approved by the State Department of Education.

**Source:** Laws 1973, LB 403, § 7; Laws 1974, LB 863, § 6; Laws 1977, LB 443, § 3; Laws 1978, LB 871, § 12; R.S.1943, (1984), § 43-647; Laws 1987, LB 367, § 30; Laws 1989, LB 183, § 22; R.S.1943, (1994), § 79-3330; Laws 1996, LB 900, § 822; Laws 1996, LB 1044, § 822; Laws 1997, LB 346, § 29; Laws 1997, LB 347, § 36; Laws 1999, LB 813, § 42; Laws 2016, LB1067, § 56.

**Cross References**

**Option enrollment program**, exemption from payment responsibility for resident school district, see section 79-246.

**79-1144 Children with disabilities; education; funds; channeled through office of State Department of Education; expenditures authorized.**

(1) Funds shall be appropriated by the Legislature to carry out sections 79-1142 to 79-1144 and 79-1147. Such funds shall be channeled through the State Department of Education. The department is authorized to expend such funds upon proper vouchers approved by the department and warrants issued by the Director of Administrative Services for financial reimbursement to school districts, educational service units, special education cooperatives created by school districts, agencies, and parents or guardians, including (a) reimbursement pursuant to section 79-1129 for actual transportation expenses per year for children with disabilities a pro rata amount which shall be determined by the State Board of Education from appropriations for special education approved by the Legislature based on all actual allowable transportation costs, (b) reimbursement for instructional aids and consultative, supervisory, research, and testing services to school districts, and (c) reimbursement for salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education programs. Minor building modifications shall not be eligible for state reimbursement as an allowable expense. Applications for state reimbursement for actual transportation expenses shall be submitted to the department annually on a date and on forms prescribed by the department. Amendments to applications for actual transportation expenses shall be submitted on dates prescribed by the department during the school year in which the original application was made.

(2) Any adjustment of payments pursuant to section 79-1065 caused by the failure of a school district to meet federal spending requirements under the federal Individuals with Disabilities Education Act as such act existed on January 1, 2017, may be used by the department to reimburse the United States Department of Education in the amount of the federal funds awarded to such school district or the amount of such adjustment, whichever is less.

**Source:** Laws 1949, c. 131, § 8, p. 345; Laws 1963, c. 256, § 1, p. 777; Laws 1967, c. 526, § 4, p. 1749; Laws 1971, LB 178, § 1; Laws 1971, LB 977, § 2; Laws 1972, LB 690, § 5; Laws 1973, LB 102,

§ 2; Laws 1974, LB 92, § 2; Laws 1986, LB 1093, § 1; Laws 1986, LB 942, § 6; Laws 1986, LB 1177, § 20; R.S.Supp.,1986, § 43-611; Laws 1987, LB 367, § 33; Laws 1992, Third Spec. Sess., LB 15, § 1; Laws 1993, LB 597, § 1; Laws 1994, LB 858, § 12; Laws 1995, LB 742, § 7; R.S.Supp.,1995, § 79-3333; Laws 1996, LB 900, § 826; Laws 1997, LB 346, § 32; Laws 1999, LB 813, § 44; Laws 2017, LB512, § 20.

## (d) BRIDGE PROGRAMS

**79-1189 Repealed. Laws 2018, LB669, § 1.**

**79-1190 Repealed. Laws 2018, LB669, § 1.**

**79-1191 Repealed. Laws 2018, LB669, § 1.**

**79-1192 Repealed. Laws 2018, LB669, § 1.**

**79-1193 Repealed. Laws 2018, LB669, § 1.**

**79-1194 Repealed. Laws 2018, LB669, § 1.**

**79-1195 Repealed. Laws 2018, LB669, § 1.**

**79-1196 Repealed. Laws 2018, LB669, § 1.**

## (m) STUDENT ACHIEVEMENT COORDINATOR

**79-11,155 Student achievement coordinator; appointment; qualifications; duties.**

The Commissioner of Education shall appoint a student achievement coordinator, subject to confirmation by a majority vote of the members of the State Board of Education. The coordinator shall have a background and training in addressing the unique educational needs of low-achieving students, including students in poverty, limited English proficient students, and highly mobile students.

The coordinator shall evaluate and coordinate existing resources for effective programs to increase achievement for such students across the state.

The coordinator or other department staff designated by the Commissioner of Education shall also consult with learning communities, educational service units, and school districts on the development, implementation, and evaluation of community achievement plans. In addition, the coordinator or other department staff designated by the commissioner shall conduct an initial review of submitted community achievement plans and return the plans with any suggestions or comments prior to the final submission of the plan for approval by the State Board of Education.

**Source:** Laws 2014, LB967, § 21; Laws 2016, LB1067, § 57; Laws 2018, LB1081, § 16.

Effective date July 19, 2018.

## (n) DYSLEXIA

**79-11,156 Student; receive evidence-based structured literacy instruction.**

(1) Beginning with the 2018-19 school year, unless otherwise provided in an individualized education plan for a student receiving special education services, each student who is identified as exhibiting characteristics of dyslexia shall receive evidence-based structured literacy instruction implemented with fidelity using a multisensory approach as provided in the technical assistance document for dyslexia adopted and promulgated by the State Department of Education pursuant to section 79-11,157.

(2) A school district shall not require a student who exhibits characteristics of dyslexia to obtain a medical diagnosis to receive intervention pursuant to this section.

**Source:** Laws 2018, LB1052, § 1.  
Effective date July 19, 2018.

### **79-11,157 State Department of Education; duties.**

The State Department of Education shall develop and distribute a technical assistance document for dyslexia. The technical assistance document shall provide information about the characteristics of dyslexia, associated conditions of dyslexia, indicators of dyslexia, and the screening, progress monitoring, evaluation, instruction, and intervention for dyslexia. The technical assistance document shall also provide guidance for evidence-based structured literacy instruction to be implemented with fidelity using a multisensory approach for students who are identified as exhibiting characteristics of dyslexia. Such document shall be distributed to all teacher education programs, educational service units, and school districts to create statewide awareness among educators. The document shall also be referenced in the rules and regulations of the department regarding approval of teacher education programs, special education, and accreditation of schools.

**Source:** Laws 2018, LB1052, § 2.  
Effective date July 19, 2018.

### **79-11,158 Teacher education program; include instruction in dyslexia.**

On and after July 1, 2019, each teacher education program approved by the State Board of Education shall include as a part of their initial program course requirements instruction in dyslexia, including, but not limited to:

- (1) Knowledge and best practice standards for teaching reading;
- (2) Characteristics of dyslexia and the science of dyslexia; and
- (3) Evidence-based structured literacy interventions, classroom accommodations, and assistive technology for individuals with dyslexia.

**Source:** Laws 2018, LB1052, § 3.  
Effective date July 19, 2018.

## **ARTICLE 12**

### **EDUCATIONAL SERVICE UNITS ACT**

Section	
79-1204.	Role and mission; powers and duties.
79-1205.	Annual adjustment to boundaries; State Board of Education; duties.
79-1217.	Governing board; name; members; election; qualification; vacancy; expenses.
79-1241.03.	Distribution of funds; certification by department to educational service unit and learning community; distribution.



Section

79-1245. Educational Service Unit Coordinating Council; created; composition; funding; powers.

**79-1204 Role and mission; powers and duties.**

(1) The role and mission of the educational service units is to serve as educational service providers in the state's system of elementary and secondary education.

(2) Educational service units shall:

(a) Act primarily as service agencies in providing core services and services identified and requested by member school districts;

(b) Provide for economy, efficiency, and cost-effectiveness in the cooperative delivery of educational services;

(c) Provide educational services through leadership, research, and development in elementary and secondary education;

(d) Act in a cooperative and supportive role with the State Department of Education and school districts in development and implementation of long-range plans, strategies, and goals for the enhancement of educational opportunities in elementary and secondary education; and

(e) Serve, when appropriate and as funds become available, as a repository, clearinghouse, and administrator of federal, state, and private funds on behalf of school districts which choose to participate in special programs, projects, or grants in order to enhance the quality of education in Nebraska schools.

(3) Core services shall be provided by educational service units to all member school districts. Core services shall be defined by each educational service unit as follows:

(a) Core services shall be within the following service areas in order of priority: (i) Staff development which shall include access to staff development related to improving the achievement of students in poverty and students with diverse backgrounds; (ii) technology, including distance education services; and (iii) instructional materials services;

(b) Core services shall improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state's system of elementary and secondary education;

(c) Core services shall provide schools with access to services that:

(i) The educational service unit and its member school districts have identified as necessary services;

(ii) Are difficult, if not impossible, for most individual school districts to effectively and efficiently provide with their own personnel and financial resources;

(iii) Can be efficiently provided by each educational service unit to its member school districts; and

(iv) Can be adequately funded to ensure that the service is provided equitably to the state's public school districts;

(d) Core services shall be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis; and

(e) Core services shall be provided by the educational service unit in a manner that minimizes the costs of administration or service delivery to member school districts.

(4) Educational service units shall meet minimum accreditation standards set by the State Board of Education that will:

(a) Provide for accountability to taxpayers;

(b) Assure that educational service units are assisting and cooperating with school districts to provide for equitable and adequate educational opportunities statewide; and

(c) Assure a level of quality in educational programs and services provided to school districts by the educational service units.

(5) Educational service units may contract to provide services to:

(a) Nonmember public school districts;

(b) Nonpublic school systems;

(c) Other educational service units; and

(d) Other public agencies, under the Interlocal Cooperation Act and the Joint Public Agency Act.

(6) Educational service units shall not regulate school districts unless specifically provided pursuant to another section of law.

(7) The board of any educational service unit in this state may pay from its funds an amount to be determined by the board for membership dues in associations of school boards or boards of education.

**Source:** Laws 1987, LB 688, § 1; R.S.1943, (1994), § 79-2201.02; Laws 1996, LB 900, § 921; Laws 1997, LB 806, § 57; Laws 1999, LB 87, § 89; Laws 2006, LB 1208, § 8; Laws 2007, LB641, § 34; Laws 2009, LB549, § 45; Laws 2013, LB410, § 13; Laws 2016, LB1002, § 1.

#### Cross References

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

#### **79-1205 Annual adjustment to boundaries; State Board of Education; duties.**

On or before August 1 of each year, the State Board of Education shall adjust the boundaries of any educational service unit the boundaries of which do not align with the boundaries of the member school districts on August 1 of such year. Such boundary adjustments shall align the boundaries of the educational service unit with the boundaries of the member school districts as the boundaries of the member school districts existed on August 1 of such year. Such boundary adjustments shall be referred to the appropriate county and educational service unit officials, and such officials shall implement the adjustments and make the necessary changes in the educational service unit maps and tax records.

**Source:** Laws 2007, LB603, § 10; Laws 2015, LB525, § 25.

#### **79-1217 Governing board; name; members; election; qualification; vacancy; expenses.**

(1) All educational service units shall be governed by a board to be known as the Board of Educational Service Unit No. . . . . Until the first Thursday after

the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member from each county and four members at large, all of whom shall reside within the geographical boundaries of the educational service unit, but no more than two of the members at large shall be appointed or elected from the same county unless any one county within the educational service unit has a population in excess of one hundred fifty thousand inhabitants or the educational service unit consists of only one county. Beginning on the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member elected to represent each election district established pursuant to section 79-1217.01. Successors to the members initially appointed pursuant to section 79-1212 shall be elected pursuant to section 32-515.

(2) Vacancies in office shall occur as set forth in section 32-560, except as otherwise provided in section 79-1212 regarding the requirement to live in the district represented, or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the geographical boundaries of the educational service unit for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. Whenever any vacancy occurs on the board, the remaining members of such board shall appoint an individual residing within the election district of the educational service unit for which the vacancy exists and meeting the qualifications for the office to fill such vacancy for the balance of the unexpired term.

(3) Members of the board shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties under the Educational Service Units Act as provided in sections 81-1174 to 81-1177.

(4) Any joint school district located in two or more counties shall be considered a part of the educational service unit in which the greater number of school-age children of such joint school district reside.

(5) The administrator of each educational service unit, prior to July 1 of each year in which a statewide primary election is to be held, shall certify to the election commissioner or county clerk of each county located within the unit the corporate name of each school district, as described in section 79-405, located within the county. If a school district is a joint school district located in two or more counties, the administrator shall certify to each election commissioner or county clerk the educational service unit of which the school district is considered to be a part.

(6) An educational service unit may consist of a single school district if the single school district is either a Class IV or Class V school district. An educational service unit with only one member school district shall be governed by the school board of such school district and shall participate in one or more of the statewide projects managed by the Educational Service Unit Coordinating Council.

**Source:** Laws 1965, c. 504, § 3, p. 1608; Laws 1967, c. 560, § 1, p. 1844; Laws 1969, c. 747, § 2, p. 2818; Laws 1969, c. 746, § 8, p. 2814; Laws 1977, LB 201, § 17; Laws 1978, LB 632, § 10; Laws 1981, LB 204, § 163; Laws 1987, LB 688, § 16; Laws 1988, LB 1142,

§ 12; Laws 1991, LB 511, § 65; Laws 1992, LB 245, § 70; Laws 1992, LB 1063, § 200; Laws 1992, Second Spec. Sess., LB 1, § 171; Laws 1994, LB 76, § 607; R.S.1943, (1994), § 79-2203; Laws 1996, LB 900, § 934; Laws 1997, LB 345, § 47; Laws 1997, LB 347, § 47; Laws 2001, LB 797, § 49; Laws 2002, LB 647, § 2; Laws 2007, LB603, § 14; Laws 2010, LB965, § 2; Laws 2012, LB446, § 1; Laws 2018, LB377, § 83.

Operative date January 1, 2019.

**79-1241.03 Distribution of funds; certification by department to educational service unit and learning community; distribution.**

(1) Two percent of the funds appropriated for core services and technology infrastructure shall be transferred to the Educational Service Unit Coordinating Council. The remainder of such funds shall be distributed pursuant to subsections (2) through (5) of this section.

(2)(a) The distance education and telecommunications allowance for each educational service unit shall equal eighty-five percent of the difference of the costs for telecommunications services, for access to data transmission networks that transmit data to and from the educational service unit, and for the transmission of data on such networks paid by the educational service unit as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to 47 U.S.C. 254, as such section existed on January 1, 2007, for the educational service unit as reported on the annual financial report for the most recently available complete data year and minus any receipts from school districts or other educational entities for payment of such costs as reported on the annual financial report of the educational service unit.

(b) The base allocation of each educational service unit shall equal two and one-half percent of the funds appropriated for distribution pursuant to this section.

(c) The satellite office allocation for each educational service unit shall equal one percent of the funds appropriated for distribution pursuant to this section for each office of the educational service unit, except the educational service unit headquarters, up to the maximum number of satellite offices. The maximum number of satellite offices used for the calculation of the satellite office allocation for any educational service unit shall equal the difference of the ratio of the number of square miles within the boundaries of the educational service unit divided by four thousand minus one with the result rounded to the closest whole number.

(d) The statewide adjusted valuation shall equal the total adjusted valuation for all member districts of educational service units pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the Tax Equity and Educational Opportunities Support Act for the school fiscal year for which the distribution is being calculated pursuant to this section.

(e) The adjusted valuation for each educational service unit shall equal the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section, except that such adjusted valuation for member school districts that are also member districts of a learning community shall be

reduced by ten percent. The adjusted valuation for each learning community shall equal ten percent of the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section.

(f) The local effort rate shall equal \$0.0135 per one hundred dollars of adjusted valuation.

(g) The statewide student allocation shall equal the difference of the sum of the amount appropriated for distribution pursuant to this section plus the product of the statewide adjusted valuation multiplied by the local effort rate minus the distance education and telecommunications allowance, base allocation, and satellite office allocation for all educational service units and minus any adjustments required by subsection (4) of this section.

(h) The sparsity adjustment for each educational service unit and learning community shall equal the sum of one plus one-tenth of the ratio of the square miles within the boundaries of the educational service unit divided by the fall membership of the member school districts for the school fiscal year immediately preceding the school fiscal year for which the distribution is being calculated pursuant to this section.

(i) The adjusted students for each multidistrict educational service unit shall equal the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated of the member school districts that will not be members of a learning community and ninety percent of the fall membership for such school fiscal year of the member school districts that will be members of a learning community pursuant to this section multiplied by the sparsity adjustment for the educational service unit. The adjusted students for each single-district educational service unit shall equal ninety-five percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated if the member school district will not be a member of a learning community and eighty-five percent of the fall membership for such school fiscal year if the member school district will be a member of a learning community pursuant to this section, multiplied by the sparsity adjustment for the educational service unit. The adjusted students for each learning community shall equal ten percent of the fall membership for such school fiscal year of the member school districts multiplied by the sparsity adjustment for the learning community.

(j) The per student allocation shall equal the statewide student allocation divided by the total adjusted students for all educational service units and learning communities.

(k) The student allocation for each educational service unit and learning community shall equal the per student allocation multiplied by the adjusted students for the educational service unit or learning community.

(l) The needs for each educational service unit shall equal the sum of the distance education and telecommunications allowance, base allocation, satellite office allocation, and student allocation for the educational service unit and the needs for each learning community shall equal the student allocation for the learning community.

(m) The distribution of core services and technology infrastructure funds for each educational service unit and learning community shall equal the needs for each educational service unit or learning community minus the product of the

adjusted valuation for the educational service unit or learning community multiplied by the local effort rate.

(3) If an educational service unit is the result of a merger or received new member school districts from another educational service unit, the educational service unit shall be considered a new educational service unit for purposes of this section. For each new educational service unit, the needs minus the distance education and telecommunications allowance for such new educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place or the new member school districts are received, equal an amount not less than the needs minus the distance education and telecommunications allowance for the portions of the educational service units transferred to the new educational service unit for the fiscal year immediately preceding the merger or receipt of new member school districts, except that if the total amount available to be distributed pursuant to subsections (2) through (5) of this section for the year for which needs are being calculated is less than the total amount distributed pursuant to such subsections for the fiscal year immediately preceding the merger or receipt of new member school districts, the minimum needs minus the distance education and telecommunications allowance for each educational service unit pursuant to this subsection shall be reduced by a percentage equal to the ratio of such difference divided by the total amount distributed pursuant to subsections (2) through (5) of this section for the fiscal year immediately preceding the merger or receipt of new member school districts. The needs minus the distance education and telecommunications allowance for the portions of educational service units transferred to the new educational service unit for the fiscal year immediately preceding a merger or receipt of new member school districts shall equal the needs minus the distance education and telecommunications allowance calculated for such fiscal year pursuant to subsections (2) through (5) of this section for any educational service unit affected by the merger or the transfer of school districts multiplied by a ratio equal to the valuation that was transferred to the new educational service unit for which the minimum is being calculated divided by the total valuation of the educational service unit transferring the territory.

(4) If the minimum needs minus the distance education and telecommunications allowance pursuant to subsection (3) of this section for any educational service unit exceeds the amount that would otherwise be calculated for such educational service unit pursuant to subsection (2) of this section, the statewide student allocation shall be reduced such that the total amount to be distributed pursuant to this section equals the appropriation for core services and technology infrastructure funds and no educational service unit has needs minus the distance education and telecommunications allowance less than the greater of any minimum amounts calculated for such educational service unit pursuant to subsection (3) of this section.

(5) The State Department of Education shall certify the distribution of core services and technology infrastructure funds pursuant to subsections (2) through (5) of this section to each educational service unit and learning community on or before July 1 of each year for the following school fiscal year. Except as otherwise provided in this subsection, any funds appropriated for distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each month beginning in September of each school fiscal year and ending in June. Funds distributed to

educational service units pursuant to this section shall be used for core services and technology infrastructure with the approval of representatives of two-thirds of the member school districts of the educational service unit, representing a majority of the adjusted students in the member school districts used in calculations pursuant to this section for such funds. The valuation of individual school districts shall not be considered in the utilization of such core services or technology infrastructure funds by member school districts for funds received after July 1, 2010. Funds distributed to learning communities shall be used for evaluation and research pursuant to section 79-2104.02 with the approval of the learning community coordinating council.

(6) For purposes of this section, the determination of whether or not a school district will be a member of an educational service unit or a learning community shall be based on the information available May 1 for the following school fiscal year.

(7) It is the intent of the Legislature that:

(a) Funding for core services and technology infrastructure for each educational service unit consist of both amounts received pursuant to this section and an amount greater than or equal to the product of the adjusted valuation for the educational service unit multiplied by the local effort rate; and

(b) Each multidistrict educational service unit use an amount equal to at least five percent of such funding for core services and technology infrastructure for cooperative projects between member school districts and that each such educational service unit use an amount equal to at least five percent of such funding for core services and technology infrastructure for statewide projects managed by the Educational Service Unit Coordinating Council.

**Source:** Laws 2007, LB603, § 24; Laws 2008, LB1154, § 15; Laws 2009, LB549, § 48; Laws 2010, LB1070, § 11; Laws 2012, LB446, § 3; Laws 2016, LB1067, § 59.

#### Cross References

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

### **79-1245 Educational Service Unit Coordinating Council; created; composition; funding; powers.**

(1) The Educational Service Unit Coordinating Council is created. The council shall be composed of one administrator from each educational service unit and beginning July 1, 2017, one nonvoting administrator from each learning community. The council shall be funded from two percent of the core services and technology infrastructure funding appropriated pursuant to section 79-1241.03, appropriations by the Legislature for distance education, and fees established for services provided to educational entities.

(2) The council is a political subdivision and a public body corporate and politic of this state, exercising public powers separate from the participating educational service units. The council shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic but shall not have taxing power.

(3) The council shall have power (a) to sue and be sued, (b) to have a seal and alter the same at will or to dispense with the necessity thereof, (c) to make and execute contracts and other instruments, (d) to receive, hold, and use money and real and personal property, (e) to hire and compensate employees, includ-

ing certificated employees, (f) to act as a fiscal agent for statewide initiatives being implemented by employees of one or more educational service units, and (g) from time to time, to make, amend, and repeal bylaws, rules, and regulations not inconsistent with sections 79-1245 to 79-1249. Such power shall only be used as necessary or convenient to carry out and effectuate the powers and purposes of the council.

**Source:** Laws 2007, LB603, § 16; Laws 2010, LB1071, § 29; Laws 2016, LB1067, § 60.

## ARTICLE 13

### EDUCATIONAL TECHNOLOGY AND TELECOMMUNICATIONS

#### (b) EDUCATIONAL TELECOMMUNICATIONS

##### Section

79-1315. Nebraska Educational Telecommunications Commission; membership; appointment; term; expenses.

#### (c) DISTANCE EDUCATION

79-1337. Distance education incentives; application; contents; calculation of incentives; denial of incentives; appeal.

#### (b) EDUCATIONAL TELECOMMUNICATIONS

#### **79-1315 Nebraska Educational Telecommunications Commission; membership; appointment; term; expenses.**

(1) The Nebraska Educational Telecommunications Commission shall be composed of eleven members, as follows: (a) The Commissioner of Education or his or her designee; (b) the President of the University of Nebraska or his or her designee; (c) a representative of the state colleges; (d) a representative of the community colleges; (e) a representative of private educational institutions of the State of Nebraska; and (f) six members of the general public, none of whom shall be associated with any of the institutions listed in subdivisions (a) through (e) of this subsection and two of whom shall be from each congressional district. No more than four of the members shall be actively engaged in the teaching profession or administration of an educational institution.

(2) The members described in subdivisions (1)(c) through (1)(f) of this section shall be appointed by the Governor with the approval of the Legislature for terms of four years, and the term of the member described in subdivision (1)(d) of this section shall be the same as the term of the member described in subdivision (1)(c) of this section. Vacancies shall be filled by the Governor for the unexpired term. The commission shall be nonpolitical in character, and selection of the members of the commission shall be made on a nonpolitical basis. No member of the commission shall receive any compensation for his or her services. Reimbursement shall be provided for reasonable and necessary expenses incurred in attending scheduled meetings of the commission as provided in sections 81-1174 to 81-1177.

If the Commissioner of Education is unable to attend a commission meeting, his or her designee is authorized to act on behalf of the commissioner, and if the President of the University of Nebraska or his or her designee is unable to attend a commission meeting, the Executive Vice President and Provost for academic affairs is authorized to act on his or her behalf.

**Source:** Laws 1963, c. 468, § 2, p. 1497; Laws 1965, c. 534, § 1, p. 1679; Laws 1969, c. 741, § 1, p. 2794; Laws 1969, c. 742, § 1, p. 2795;



Laws 1981, LB 204, § 161; Laws 1984, LB 645, § 3; Laws 1988, LB 939, § 1; Laws 1991, LB 43, § 1; Laws 1994, LB 854, § 1; R.S.1943, (1994), § 79-2102; Laws 1996, LB 900, § 971; Laws 1997, LB 347, § 52; Laws 2015, LB525, § 26.

(c) DISTANCE EDUCATION

**79-1337 Distance education incentives; application; contents; calculation of incentives; denial of incentives; appeal.**

(1) For fiscal years 2007-08 through 2020-21, the State Department of Education shall provide distance education incentives to school districts and educational service units for qualified distance education courses coordinated through the Educational Service Unit Coordinating Council as provided in this section. Through fiscal year 2015-16, funding for such distance education incentives shall come from the Education Innovation Fund. For fiscal years 2016-17 through 2020-21, funding for such distance education incentives shall come from the Nebraska Education Improvement Fund.

(2) School districts and educational service units shall apply for incentives annually through calendar year 2020 to the department on or before August 1 on a form specified by the department. The application shall:

(a) For school districts, specify (i) the qualified distance education courses which were received by students in the membership of the district in the then-current school fiscal year and which were not taught by a teacher employed by the school district and (ii) for each such course (A) the number of students in the membership of the district who received the course, (B) the educational entity employing the teacher, and (C) whether the course was a two-way interactive video distance education course; and

(b) For school districts and educational service units, specify (i) the qualified distance education courses which were received by students in the membership of another educational entity in the then-current school fiscal year and which were taught by a teacher employed by the school district or educational service unit, (ii) for each such course for school districts, the number of students in the membership of the district who received the course, and (iii) for each such course (A) the other educational entities in which students received the course and how many students received the course at such educational entities, (B) any school district that is sparse or very sparse as such terms are defined in section 79-1003 that had at least one student in the membership who received the course, and (C) whether the course was a two-way interactive video distance education course.

(3) On or before September 1 of each year through calendar year 2020, the department shall certify the incentives for each school district and educational service unit which shall be paid on or before October 1 of such year. The incentives for each district shall be calculated as follows:

(a) Each district shall receive distance education units for each qualified distance education course as follows:

(i) One distance education unit for each qualified distance education course received as reported pursuant to subdivision (2)(a) of this section if the course was a two-way interactive video distance education course;

(ii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was

not received by at least one student who was in the membership of another school district which was sparse or very sparse;

(iii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was sparse or very sparse, but the course was not a two-way interactive video distance education course; and

(iv) Two distance education units for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was sparse or very sparse and the course was a two-way interactive video distance education course;

(b) The difference of the amount available for distribution in the Education Innovation Fund on the August 1 when the applications were due minus any amount to be paid to school districts pursuant to section 79-1336 shall be divided by the number of distance education units to determine the incentive per distance education unit, except that the incentive per distance education unit shall not equal an amount greater than one thousand dollars; and

(c) The incentives for each school district shall equal the number of distance education units calculated for the school district multiplied by the incentive per distance education unit.

(4) If there are additional funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section, school districts and educational service units may qualify for additional incentives for elementary distance education courses. Such incentives shall be calculated for sending and receiving school districts and educational service units as follows:

(a) The per-hour incentives shall equal the funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section divided by the sum of the hours of elementary distance education courses sent or received for each school district and educational service unit submitting an application, except that the per-hour incentives shall not be greater than ten dollars; and

(b) The elementary distance education incentives for each school district and educational service unit shall equal the per-hour incentive multiplied by the hours of elementary distance education courses sent or received by the school district or educational service unit.

(5) The department may verify any or all application information using annual curriculum reports and may request such verification from the council.

(6) On or before October 1 of each year through calendar year 2020, a school district or educational service unit may appeal the denial of incentives for any course by the department to the State Board of Education. The board shall allow a representative of the school district or educational service unit an opportunity to present information concerning the appeal to the board at the November board meeting. If the board finds that the course meets the requirements of this section, the department shall pay the district from the Education Innovation Fund as soon as practical in an amount for which the district or educational service unit should have qualified based on the incentive per

distance education unit used in the original certification of incentives pursuant to this section.

(7) The State Board of Education shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2006, LB 1208, § 23; Laws 2007, LB603, § 30; Laws 2008, LB988, § 53; Laws 2014, LB967, § 23; Laws 2015, LB519, § 25.

## ARTICLE 15

### COMPACT FOR EDUCATION

#### Section

79-1504. Education Commission of the States; members; selection.

#### **79-1504 Education Commission of the States; members; selection.**

The provisions of Article III, SECTION A., of the Compact for Education notwithstanding, the members of the Education Commission of the States representing this state shall consist of the Governor, three members of the Legislature selected by the Executive Board of the Legislative Council, and three members appointed by the Governor. Of the three members appointed by the Governor, one member shall be a member of a school board or an appointed representative of a state association of school boards.

**Source:** Laws 1967, c. 516, § 4, p. 1737; Laws 1987, LB 199, § 1; R.S.1943, (1994), § 79-2504; Laws 1996, LB 900, § 1003; Laws 2018, LB377, § 84.

Operative date January 1, 2019.

## ARTICLE 21

### LEARNING COMMUNITY

#### Section

- 79-2104. Learning community coordinating council; powers.
- 79-2104.01. Learning community coordinating council; advisory committee; members; duties.
- 79-2104.02. Learning community coordinating council; use of funds; report.
- 79-2104.03. Advisory committee; submit plan for early childhood education programs for children in poverty; powers and duties.
- 79-2104.04. Learning community coordinating council; members; duties.
- 79-2107. Repealed. Laws 2016, LB1067, § 70.
- 79-2110. Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.
- 79-2111. Elementary learning center facilities; focus school or program capital projects; tax levy; repayment of funds; interest; waiver.
- 79-2113. Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.
- 79-2115. Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits.
- 79-2117. Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.
- 79-2120. State Department of Education; certification of students qualifying for free or reduced-price lunches.
- 79-2122. Community achievement plans; submission to State Department of Education; state board; approve or reject; reasons; term; report; department; duties.
- 79-2123. Annual financial report; contents; audit; failure to file annual financial report; commissioner; duties.

**79-2104 Learning community coordinating council; powers.**

A learning community coordinating council shall have the authority to:

(1) For fiscal years prior to fiscal year 2017-18, levy a common levy for the general funds of member school districts pursuant to sections 77-3442 and 79-1073;

(2) Levy for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council pursuant to subdivision (2)(f) of section 77-3442 and section 79-2111;

(3) Levy for early childhood education programs for children in poverty, for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects pursuant to subdivision (2)(g) of section 77-3442, except that not more than ten percent of such levy may be used for elementary learning center employees;

(4) Develop, submit, administer, and evaluate community achievement plans in collaboration with the advisory committee, educational service units serving member school districts, member school districts, and the student achievement coordinator or other department staff designated by the Commissioner of Education;

(5) Collect, analyze, and report data and information, including, but not limited to, information provided by a school district pursuant to subsection (5) of section 79-201;

(6) Approve focus schools and focus programs to be operated by member school districts;

(7) Adopt, approve, and implement a diversity plan pursuant to sections 79-2110 and 79-2118;

(8) Through school year 2016-17, administer the open enrollment provisions in section 79-2110 for the learning community as part of a diversity plan developed by the council to provide educational opportunities which will result in increased diversity in schools across the learning community;

(9) Annually conduct school fairs to provide students and parents the opportunity to explore the educational opportunities available at each school in the learning community and develop other methods for encouraging access to such information and promotional materials;

(10) Develop procedures for determining best practices for addressing student achievement barriers and for disseminating such practices within the learning community and to other school districts;

(11) Establish and administer elementary learning centers through achievement subcouncils pursuant to sections 79-2112 to 79-2114;

(12) Administer the learning community funds distributed to the learning community pursuant to section 79-2111;

(13) Establish a procedure for receiving community input and complaints regarding the learning community;

(14) Establish a procedure to assist parents, citizens, and member school districts in accessing an approved center pursuant to the Dispute Resolution

Act to resolve disputes involving member school districts or the learning community. Such procedure may include payment by the learning community for some mediation services;

(15) Establish and administer pilot projects related to enhancing the academic achievement of elementary students, particularly students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility;

(16) Provide funding to public or private entities engaged in the juvenile justice system providing prefilming and diversion programming designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system; and

(17) Hold public hearings at its discretion in response to issues raised by residents regarding the learning community, a member school district, and academic achievement.

**Source:** Laws 2006, LB 1024, § 106; Laws 2007, LB641, § 40; Laws 2008, LB1154, § 18; Laws 2009, LB392, § 16; Laws 2010, LB1070, § 13; Laws 2011, LB463, § 20; Laws 2013, LB585, § 3; Laws 2016, LB1067, § 61; Laws 2018, LB1081, § 17.  
Effective date July 19, 2018.

#### Cross References

**Dispute Resolution Act**, see section 25-2901.

#### **79-2104.01 Learning community coordinating council; advisory committee; members; duties.**

Each learning community coordinating council shall have an advisory committee composed of the superintendent from each member school district or his or her representative. The advisory committee shall:

(1) Collaborate with the learning community coordinating council on the development, implementation, and evaluation of the community achievement plan;

(2) Review proposals for focus programs, focus schools, magnet schools, and pathways;

(3) Provide recommendations for improving the learning community's diversity plan;

(4) Review results and provide recommendations to the learning community coordinating council regarding the implementation and administration of early childhood education programs for children in poverty; and

(5) Provide input to the learning community coordinating council on other issues as requested.

**Source:** Laws 2008, LB1154, § 19; Laws 2013, LB585, § 4; Laws 2016, LB1067, § 62.

#### **79-2104.02 Learning community coordinating council; use of funds; report.**

Each learning community coordinating council shall use any funds received pursuant to section 79-1241.03 for evaluation of programs related to the community achievement plan developed with the assistance of the student achievement coordinator or other department staff designated by the Commissioner of Education and evaluation and research regarding the progress of the

learning community pursuant to plans developed by the learning community coordinating council with assistance from the Educational Service Unit Coordinating Council and adjusted on an ongoing basis. The evaluation regarding the progress of the learning community shall be conducted by one or more other entities or individuals who are not employees of the learning community and shall measure progress toward the goals and objectives of the learning community, which goals and objectives shall include reduction of excessive absenteeism of students in the member school districts of the learning community and closing academic achievement gaps based on socioeconomic status, and the effectiveness of the approaches used by the learning community or pilot project to reach such goals and objectives. Any research conducted pursuant to this section shall also be related to such goals and objectives or programs related to the community achievement plan. Each learning community shall report evaluation and research results electronically to the Education Committee of the Legislature on or before January 1 of each year.

**Source:** Laws 2010, LB1070, § 17; Laws 2011, LB333, § 16; Laws 2011, LB463, § 21; Laws 2012, LB782, § 162; Laws 2013, LB410, § 15; Laws 2016, LB1067, § 64; Laws 2018, LB1081, § 18.  
Effective date July 19, 2018.

**79-2104.03 Advisory committee; submit plan for early childhood education programs for children in poverty; powers and duties.**

The advisory committee described in section 79-2104.01 shall submit a plan as provided in subdivision (4) of section 79-2104.01 to the learning community coordinating council for any early childhood education programs for children in poverty and the services to be provided by such programs. In developing the plan, the advisory committee shall seek input from member school districts and community resources and collaborate with such resources in order to maximize the available opportunities and resources for such programs. The advisory committee may, as part of such plan, recommend services to be provided through contract with, or grants to, school districts to provide or contract for some or all of the services. The advisory committee shall take special efforts to establish early childhood education programs for children in poverty so that such programs are readily available and accessible to children and families located in areas with a high concentration of poverty.

**Source:** Laws 2013, LB585, § 5; Laws 2016, LB1067, § 65.

**79-2104.04 Learning community coordinating council; members; duties.**

Each learning community coordinating council shall be required to select at least two members to meet with the advisory committee and learning community administrators at least twice annually to discuss the community achievement plan, results of evaluations conducted with learning community or school district funds, best practices for improving achievement, particularly for students with achievement obstacles, learning community programs, and other matters related to improving education for students within the learning community and throughout the state.

**Source:** Laws 2016, LB1067, § 63.

**79-2107 Repealed. Laws 2016, LB1067, § 70.**

**79-2110 Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.**

(1)(a) Each diversity plan shall provide for open enrollment in all school buildings in the learning community for school years prior to school year 2017-18, subject to specific limitations necessary to bring about diverse enrollments in each school building in the learning community. Such limitations, for school buildings other than focus schools and programs other than focus programs, shall include giving preference at each school building first to siblings of students who will be enrolled as continuing students in such school building or program for the first school year for which enrollment is sought in such school building and then to students that contribute to the socioeconomic diversity of enrollment at each building and may include establishing zone limitations in which students may access several schools other than their home attendance area school. Notwithstanding the limitations necessary to bring about diversity, open enrollment shall include providing access to students who do not contribute to the socioeconomic diversity of a school building, if, subsequent to the open enrollment selection process that is subject to limitations necessary to bring about diverse enrollments, capacity remains in a school building. In such a case, students who have applied to attend such school building shall be selected to attend such school building on a random basis up to the remaining capacity of such building. A student who has otherwise been disqualified from the school building pursuant to the school district's code of conduct or related school discipline rules shall not be eligible for open enrollment pursuant to this section. Any student who attended a particular school building in the prior school year and who is seeking education in the grades offered in such school building shall be allowed to continue attending such school building as a continuing open enrollment student through school year 2016-17.

(b) To facilitate the open enrollment provisions of this subsection, each school year each member school district in a learning community shall establish a maximum capacity for each school building under such district's control pursuant to procedures and criteria established by the learning community coordinating council. Each member school district shall also establish attendance areas for each school building under the district's control, except that the school board shall not establish attendance areas for focus schools or focus programs. The attendance areas shall be established such that all of the territory of the school district is within an attendance area for each grade. Students residing in a school district shall be allowed to attend a school building in such school district.

(c) For purposes of this section and sections 79-238 and 79-611, student who contributes to the socioeconomic diversity of enrollment means (i) a student who does not qualify for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will attend either has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or provides free meals to all students pursuant to the community eligibility provision or (ii) a student who qualifies for free or reduced-price lunches based on information collected from parents and guard-

ians when, based upon the certification pursuant to section 79-2120, the school building the student will attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community and does not provide free meals to all students pursuant to the community eligibility provision.

(2)(a) On or before March 15 of each year prior to 2017, a parent or guardian of a student residing in a member school district in a learning community may submit an application to any school district in the learning community on behalf of a student who is applying to attend a school building for the following school year that is not in an attendance area where the applicant resides or a focus school, focus program, or magnet school as such terms are defined in section 79-769. On or before April 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, the school district shall accept or reject such applications based on the capacity of the school building, the eligibility of the applicant for the school building or program, the number of such applicants that will be accepted for a given school building, and whether or not the applicant contributes to the socioeconomic diversity of the school or program to which he or she has applied and for which he or she is eligible. The school district shall notify such parent or guardian in writing of the acceptance or rejection.

(b) A student may not apply to attend a school building in the learning community for any grades that are offered by another school building for which the student had previously applied and been accepted pursuant to this section, absent a hardship exception as established by the individual school district. On or before September 1 of each year prior to 2017, each school district shall provide to the learning community coordinating council a complete and accurate report of all applications received, including the number of students who applied at each grade level at each building, the number of students accepted at each grade level at each building, the number of such students that contributed to the socioeconomic diversity that applied and were accepted, the number of applicants denied and the rationales for denial, and other such information as requested by the learning community coordinating council.

(3) Each diversity plan may include establishment of one or more focus schools or focus programs and the involvement of every member school district in one or more pathways across member school districts. Enrollment in each focus school or focus program shall be designed to reflect the socioeconomic diversity of the learning community as a whole. School district selection of students for focus schools or focus programs shall be on a random basis from two pools of applicants, those who qualify for free and reduced-price lunches and those who do not qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who do not qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who do not qualify for free and reduced-price lunches. If more capacity exists in a focus school or program than the number of applicants for such focus school or program that contribute to the socioeconomic diversity of the focus school or program, the school



district shall randomly select applicants up to the number of applicants that will be accepted for such building. A student who will complete the grades offered at a focus program, focus school, or magnet school that is part of a pathway shall be allowed to attend the focus program, focus school, or magnet school offering the next grade level as part of the pathway as a continuing student. A student who completes the grades offered at a focus program, focus school, or magnet school shall be allowed to attend a school offering the next grade level in the school district responsible for the focus program, focus school, or magnet school as a continuing student. A student who attended a program or school in the school year immediately preceding the first school year for which the program or school will operate as a focus program or focus school approved by the learning community and meeting the requirements of section 79-769 and who has not completed the grades offered at the focus program or focus school shall be a continuing student in the program or school. For school year 2016-17, students attending a focus program or focus school outside of the school district shall be considered open enrollment students and, for school year 2017-18 and each school year thereafter, students attending a focus program or focus school shall be considered option enrollment students.

(4) On or before February 15 of each year, a parent or guardian of a student who is currently attending a school building or program, except a magnet school, focus school, or focus program, outside of the school district where the student resides and who will complete the grades offered at such school building prior to the following school year shall provide notice, on a form provided by the school district, to the school board of the school district containing such school building (a) for years prior to 2017, if such student will attend another school building within such district as a continuing student and which school building such student would prefer to attend or (b) for 2017 and each year thereafter, if such student will apply to enroll as an option student in another school building within such district and which school building such student would prefer to attend. On or before March 1, such school board shall provide a notice to such parent or guardian stating which school building or buildings the student shall be allowed to attend in such school district as a continuing student or an option student for the following school year. If the student resides within the school district, the notice shall include the school building offering the grade the student will be entering for the following school year in the attendance area where the student resides. This subsection shall not apply to focus schools or programs.

(5) Prior to the beginning of school year 2017-18, a parent or guardian of a student who moves to a new residence in the learning community after April 1 may apply directly to a school board within the learning community within ninety days after moving for the student to attend a school building outside of the attendance area where the student resides. Such school board shall accept or reject such application within fifteen days after receiving the application, based on the number of applications and qualifications pursuant to subsection (2) or (3) of this section for all other students.

(6) A parent or guardian of a student who wishes to change school buildings for emergency or hardship reasons may apply directly to a school board within the learning community at any time for the student to attend a school building outside of the attendance area where the student resides. Such application shall state the emergency or hardship and shall be kept confidential by the school

board. Such school board shall accept or reject such application within fifteen days after receiving the application. Applications shall only be accepted if an emergency or hardship was presented which justifies an exemption from the procedures in subsection (4) of this section based on the judgment of such school board, and such acceptance shall not exceed the number of applications that will be accepted for the school year pursuant to subsection (2) or (3) of this section for such building.

(7) Each student attending a school building in the resident school district as an open enrollment student for any part of school year 2016-17 shall be allowed to continue attending such school building without submitting an additional application unless the student has completed the grades offered in such school building or has been expelled and is disqualified pursuant to section 79-266.01.

**Source:** Laws 2006, LB 1024, § 16; Laws 2007, LB641, § 42; Laws 2008, LB1154, § 21; Laws 2009, LB62, § 6; Laws 2010, LB1070, § 14; Laws 2015, LB525, § 27; Laws 2016, LB1066, § 21; Laws 2016, LB1067, § 66.

**79-2111 Elementary learning center facilities; focus school or program capital projects; tax levy; repayment of funds; interest; waiver.**

(1) A learning community may levy a maximum levy pursuant to subdivision (2)(f) of section 77-3442 for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated costs for focus school or program capital projects approved pursuant to this section. The proceeds from such levy shall be used for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and to reduce the bonded indebtedness required for approved projects by up to fifty percent of the estimated cost of the approved project. The funds used for reductions of bonded indebtedness shall be transferred to the school district for which the project was approved and shall be deposited in such school district's special building fund for use on such project.

(2) The learning community may approve pursuant to this section funding for capital projects which will include the purchase, construction, or remodeling of facilities for a focus school or program designed to meet the requirements of section 79-769. Such approval shall include an estimated cost for the project and shall state the amount that will be provided by the learning community for such project.

(3) If, within the ten years following receipt of the funding for a capital project pursuant to this section, a school district receiving such funding uses the facility purchased, constructed, or remodeled with such funding for purposes other than those stated to qualify for the funds, the school district shall repay such funds to the learning community with interest at the rate prescribed in section 45-104.02 accruing from the date the funds were transferred to the school district's building fund as of the last date the facility was used for such purpose as determined by the learning community coordinating council or the date that the learning community coordinating council determines that the facility will not be used for such purpose or that such facility will not be purchased, constructed, or remodeled for such purpose. Interest shall continue to accrue on outstanding balances until the repayment has been completed. The remaining terms of repayment shall be determined by the learning community

coordinating council. The learning community coordinating council may waive such repayment if the facility is used for a different focus school or program for a period of time that will result in the use of the facility for qualifying purposes for a total of at least ten years.

**Source:** Laws 2007, LB641, § 43; Laws 2008, LB1154, § 22; Laws 2010, LB1070, § 15; Laws 2016, LB1067, § 67.

**79-2113 Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.**

(1) On or before the second June 1 immediately following the establishment of a new learning community, the learning community coordinating council shall establish at least one elementary learning center for each twenty-five elementary schools in which either at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches or free meals are provided to all students pursuant to the community eligibility provision. The council shall determine how many of the initial elementary learning centers shall be located in each subcouncil district on or before September 1 immediately following the establishment of a new learning community.

(2) Each achievement subcouncil shall submit a plan to the learning community coordinating council for any elementary learning center in its subcouncil district and the services to be provided by such elementary learning center. In developing the plan, the achievement subcouncil shall seek input from community resources and collaborate with such resources in order to maximize the available opportunities and the participation of elementary students and their families. An achievement subcouncil may, as part of such plan, recommend services be provided through contracts with, or grants to, entities other than school districts to provide some or all of the services. Such entities may include collaborative groups which may include the participation of a school district. An achievement subcouncil may also, as part of such plan, recommend that the elementary learning center serve as a clearinghouse for recommending programs provided by school districts or other entities and that the elementary learning center assist students in accessing such programs. The plans for the initial elementary learning centers shall be submitted by the achievement subcouncils to the coordinating council on or before January 1 immediately following the establishment of a new learning community.

(3) Each elementary learning center shall have at least one facility that is located in an area with a high concentration of poverty. Such facility may be owned or leased by the learning community, or the use of the facility may be donated to the learning community. Programs offered by the elementary learning center may be offered in such facility or in other facilities, including school buildings.

**Source:** Laws 2007, LB641, § 45; Laws 2008, LB1154, § 23; Laws 2009, LB392, § 17; Laws 2015, LB525, § 28.

**79-2115 Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits.**

(1) Learning community funds distributed pursuant to section 79-2103 may be used by the learning community coordinating council receiving the funds for:

- (a) The administration and operation of the learning community;
- (b) The administration, operations, and programs of elementary learning centers pursuant to sections 79-2112 to 79-2114;
- (c) Supplements for extended hours to teachers in elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches and elementary schools that provide free meals to all students pursuant to the community eligibility provision;
- (d) Transportation to elementary school functions for parents of elementary students who qualify for free or reduced-price lunches or who attend an elementary school that provides free meals to all students pursuant to the community eligibility provision;
- (e) Up to six social workers to provide services through the elementary learning centers; and
- (f) Pilot projects authorized pursuant to section 79-2104.

(2) Each learning community coordinating council shall adopt policies and procedures for granting supplements for extended hours and for providing transportation for parents if any such funds are to be used for such purposes. An example of a pilot project that could receive such funds would be a school designated as Jump Start Center focused on providing intensive literacy services for elementary students with low reading scores.

(3) Each learning community coordinating council shall provide for financial audits of elementary learning centers and pilot projects. A learning community coordinating council shall serve as the recipient of private funds donated to support any elementary learning center or pilot project receiving funds from such learning community coordinating council and shall assure that the use of such private funds is included in the financial audits required pursuant to this section.

**Source:** Laws 2007, LB641, § 47; Laws 2008, LB1154, § 24; Laws 2010, LB1070, § 18; Laws 2015, LB525, § 29.

**79-2117 Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.**

Each learning community coordinating council shall have an achievement subcouncil for each subcouncil district. Through January 4, 2017, each achievement subcouncil shall consist of the three voting coordinating council members representing the subcouncil district plus any nonvoting coordinating council members choosing to participate who represent a school district that has territory within the subcouncil district. The voting coordinating council members shall also be the voting members on the achievement subcouncil. On and after January 5, 2017, each achievement subcouncil shall consist of the two learning community coordinating council members representing the subcouncil district. Each achievement subcouncil shall meet as necessary but shall meet and conduct a public hearing within its subcouncil district at least once each school year. Each achievement subcouncil shall:

- (1) Develop a diversity plan recommendation for the territory in its subcouncil district that will provide educational opportunities which will result in increased diversity in schools in the subcouncil district;

(2) Administer elementary learning centers in cooperation with the elementary learning center executive director;

(3) Receive community input and complaints regarding the learning community and academic achievement in the subcouncil district; and

(4) Hold public hearings at its discretion in its subcouncil district in response to issues raised by residents of the subcouncil district regarding the learning community, a member school district, and academic achievement in the subcouncil district.

**Source:** Laws 2007, LB641, § 50; Laws 2008, LB1154, § 25; Laws 2009, LB392, § 18; Laws 2016, LB1067, § 68; Laws 2018, LB1081, § 19.

Effective date July 19, 2018.

**79-2120 State Department of Education; certification of students qualifying for free or reduced-price lunches.**

On or before March 1, 2009, and February 1 of each year thereafter, for purposes of determining socioeconomic diversity of enrollment as defined in section 79-2110, the State Department of Education shall certify to each learning community and each member school district the average percentage of students qualifying for free or reduced-price lunches in each school building in each member school district and in the aggregate for all school buildings in the learning community based on the most current information available to the department on the immediately preceding January 1. For purposes of this section, the average percentage of students qualifying for free or reduced-price lunches in school buildings that provide free meals to all students pursuant to the community eligibility provision shall equal the identified student percentage, multiplied by 1.6, calculated pursuant to the community eligibility provision. The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2009, LB62, § 5; Laws 2015, LB525, § 30; Laws 2016, LB1066, § 22.

**79-2122 Community achievement plans; submission to State Department of Education; state board; approve or reject; reasons; term; report; department; duties.**

(1) Community achievement plans shall be submitted by learning community coordinating councils to the State Board of Education for approval.

(2) Community achievement plans shall be developed, in consultation with the student achievement coordinator or other department staff designated by the Commissioner of Education, by the learning community submitting the plan, the learning community advisory committee, and educational service units with member school districts that are members of the learning community.

(3) Community achievement plans and plan renewals shall be submitted to the State Department of Education for an initial review by the student achievement coordinator or other department staff designated by the commissioner on or before January 1, 2017, for community achievement plans to be implemented beginning with school year 2017-18 and on or before January 1 immediately preceding the school year when the plan or plan renewal will be implemented.

The student achievement coordinator or other department staff designated by the commissioner shall return the plan or plan renewal with any suggestions or comments on or before the immediately following February 15 to allow the plan to be revised prior to submission on or before March 15 for final approval by the state board at the state board's April meeting. If the state board rejects a plan or plan renewal, the reasons for the rejection shall be included with the notice of rejection and an opportunity shall be provided to revise the plan or plan renewal and for participating collaborators to appear before the board prior to a reconsideration of approval.

(4) The state board shall not approve or renew a community achievement plan unless the plan:

(a) Receives the commitment of all member school districts to participate in the plan for the three-year plan period;

(b) Clearly describes the plan responsibilities for each participating school district, the submitting learning community, the educational service unit, and any other collaborating entities;

(c) Includes an evaluation of achievement equity and an identification of achievement barriers across the participating school districts;

(d) Relies on the collaboration of all participating districts to address achievement equity and barriers to achievement across such school districts using evidence-based methods;

(e) Aligns with plans used by participating districts for accreditation, poverty, limited English proficiency, and federal funds;

(f) Evaluates the effectiveness of the efforts to address achievement equity and barriers to achievement through the community achievement plan and through other aligned plans in an effort to determine, encourage, and promulgate best practices and the efficient use of resources;

(g) Has a high likelihood, in the opinion of the state board based on the evidence presented, of improving achievement equity and reducing the impact of barriers to achievement; and

(h) For renewals, reflects changes in the plans and the actions of the collaborators in response to evaluation results.

(5) An approved plan shall remain in effect for three years except as revised with the approval of the state board. The learning community shall submit a report on the success of the plan, evaluation results, and proposed revisions by December 1 immediately following the completion of the first two years of implementation and every three years thereafter.

(6) The department shall adopt and promulgate rules and regulations establishing procedures for plan approval and technical assistance that allow for a preliminary review and recommendations from the department prior to submission of the final plan for approval by the state board. Such procedures shall also provide for an appeal process for plans that have not been approved, which includes an opportunity to present evidence to the state board.

**Source:** Laws 2016, LB1067, § 58.

**79-2123 Annual financial report; contents; audit; failure to file annual financial report; commissioner; duties.**

(1) On or before January 31 of each year, each learning community coordinating council shall submit to the Commissioner of Education a report described as the annual financial report showing (a) the amount of money received from all sources during the year and the amount of money expended by the learning community during the year, (b) other information as necessary to fulfill the requirements of section 79-1241.03, and (c) such other information as the commissioner directs.

(2) The coordinating council of each learning community shall cause a complete and comprehensive annual audit to be made of the books, accounts, records, and affairs of the learning community. The audits shall be conducted annually, except that the Auditor of Public Accounts may determine an audit of less frequency to be appropriate, but not less than once in any three-year period. The coordinating council of each learning community may contract with the Auditor of Public Accounts or select a licensed public accountant or certified public accountant or firm of such accountants to conduct the audit and shall be responsible for the cost of the audit pursuant to the contract. Such audit shall be conducted in the same manner as audits of county officers. The original copy of the audit shall be filed in the office of the Auditor of Public Accounts.

(3) When any learning community coordinating council fails to submit its annual financial report by January 31, the commissioner shall, after notice to the learning community and an opportunity to be heard, direct that (a) any learning community funds granted pursuant to section 79-2103 and (b) core services and technology infrastructure funds granted pursuant to section 79-1241.03 be withheld until such time as the report is received by the State Department of Education. In addition, the commissioner shall direct the county treasurer of each county with territory in such learning community to withhold all levy receipts belonging to the learning community until such time as the commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money.

(4) The State Department of Education may adopt and promulgate rules and regulations to carry out the purposes of this section.

**Source:** Laws 2018, LB1081, § 1.  
Effective date July 19, 2018.

**ARTICLE 22**

**INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY  
FOR MILITARY CHILDREN**

Section

79-2204. State Council on Educational Opportunity for Military Children; created; members; terms; expenses; duties; meetings.

79-2205. Compact commissioner; duties.

**79-2204 State Council on Educational Opportunity for Military Children; created; members; terms; expenses; duties; meetings.**

(1) The State Council on Educational Opportunity for Military Children is created within the department. The council shall consist of:

- (a) The following ex officio members:
  - (i) The Commissioner of Education;

(ii) The chairperson of the Education Committee of the Legislature, who shall serve as a nonvoting member of the council;

(iii) The compact commissioner appointed pursuant to section 79-2205; and

(iv) The military family education liaison, who shall serve as a member of the council after his or her appointment pursuant to subsection (3) of this section; and

(b) The following members appointed by the State Board of Education:

(i) The superintendent of a school district that has a high concentration of children of military families; and

(ii) A representative of a military installation located in this state.

(2) The members of the council appointed by the State Board of Education shall serve three-year terms. Vacancies in the council shall be filled in the same manner as the initial appointments. The members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council shall have the following duties:

(a) To advise the department with regard to the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children; and

(b) To appoint a military family education liaison to assist families and the state in implementing the compact.

(4) When the council holds a single meeting in a calendar year, that meeting may be held by videoconferencing notwithstanding subdivision (2)(e) of section 84-1411.

**Source:** Laws 2011, LB575, § 4; Laws 2015, LB525, § 31.

#### **79-2205 Compact commissioner; duties.**

A deputy commissioner of education as designated by the Commissioner of Education shall serve as the compact commissioner and shall be responsible for administering the state's participation in the Interstate Compact on Educational Opportunity for Military Children.

**Source:** Laws 2011, LB575, § 5; Laws 2015, LB525, § 32.

### **ARTICLE 23**

#### **DIPLOMA OF HIGH SCHOOL EQUIVALENCY ASSISTANCE ACT**

Section

79-2301. Act, how cited.

79-2306. Repealed. Laws 2015, LB 519, § 41.

79-2308. Grants; High School Equivalency Grant Fund; created; use; investment.

#### **79-2301 Act, how cited.**

Sections 79-2301 to 79-2308 shall be known and may be cited as the Diploma of High School Equivalency Assistance Act.

**Source:** Laws 2013, LB366, § 1; Laws 2015, LB382, § 1.

#### **79-2306 Repealed. Laws 2015, LB 519, § 41.**

**79-2308 Grants; High School Equivalency Grant Fund; created; use; investment.**



(1) The State Department of Education shall provide for grants to any entity offering a high school equivalency program, which entity is not an institution. Grants pursuant to this section shall be awarded to applicants which meet the requirements of section 79-2304.

(2) The High School Equivalency Grant 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.

(3) It is the intent of the Legislature to transfer four hundred thousand dollars from the Job Training Cash Fund to the High School Equivalency Grant Fund to carry out the purposes of subsection (1) of this section.

**Source:** Laws 2015, LB382, § 2.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 25**

**EXPANDED LEARNING OPPORTUNITY GRANT PROGRAM ACT**

**Section**

- 79-2501. Act, how cited.
- 79-2502. Purpose of act.
- 79-2503. Terms, defined.
- 79-2504. Expanded Learning Opportunity Grant Program; established.
- 79-2505. Expanded Learning Opportunity Grant Program; priorities.
- 79-2506. Department; duties; proposal for grant; contents; award of grants.
- 79-2507. School district; inform nonpublic school of potential participation.
- 79-2508. Grantees; duties.
- 79-2509. Report.
- 79-2510. Expanded Learning Opportunity Grant Fund; created; use; investment; rules and regulations.

**79-2501 Act, how cited.**

Sections 79-2501 to 79-2510 shall be known and may be cited as the Expanded Learning Opportunity Grant Program Act.

**Source:** Laws 2015, LB519, § 15.

**79-2502 Purpose of act.**

The purpose of the Expanded Learning Opportunity Grant Program Act is to promote academic achievement outside of school hours in high-need school districts.

**Source:** Laws 2015, LB519, § 16.

**79-2503 Terms, defined.**

For purposes of the Expanded Learning Opportunity Grant Program Act:

- (1) Community learning center has the definition found in 20 U.S.C. 7171(b)(1), as such section existed on January 1, 2015;
- (2) Department means the State Department of Education;
- (3) Expanded learning opportunity program means a school-community partnership that provides participating elementary-age and secondary-age stu-

dents and their families with programming and other support activities and services after school and on weekends, holidays, and other hours when school is not in session through a mix of programs and services that (a) complement but do not duplicate elementary and secondary school day learning and (b) create opportunities to strengthen school-community partnerships that provide students and their families with the support they need to be successful in school; and

(4) High-need school district means a school district in which forty percent or more of the enrolled students qualify for free and reduced price meals under the National School Lunch Program, 7 C.F.R. part 210, as such regulations existed on January 1, 2015.

**Source:** Laws 2015, LB519, § 17.

**79-2504 Expanded Learning Opportunity Grant Program; established.**

The department shall establish and administer the Expanded Learning Opportunity Grant Program. The grant program shall provide grants to community-based organizations working in partnership with schools in high-need school districts to provide expanded learning opportunity programs.

**Source:** Laws 2015, LB519, § 18.

**79-2505 Expanded Learning Opportunity Grant Program; priorities.**

The first priority of the Expanded Learning Opportunity Grant Program is to continue existing 21st Century Community Learning Centers funded by the federal 21st Century Community Learning Center program pursuant to 20 U.S.C. 7171 et seq., as such sections existed on January 1, 2015, in high-need school districts that have a record of success. The second priority shall be support for new expanded learning opportunity program development in areas of the state with a high percentage of at-risk children that are not currently served by school-based or school-linked expanded learning opportunity programs funded by the federal 21st Century Community Learning Center program pursuant to 20 U.S.C. 7171 et seq., as such sections existed on January 1, 2015.

**Source:** Laws 2015, LB519, § 19.

**79-2506 Department; duties; proposal for grant; contents; award of grants.**

(1) The department shall establish an application process and timeline pursuant to which partner organizations may submit proposals for a grant under the Expanded Learning Opportunity Grant Program. Each proposal shall include:

(a) A grant planning period;

(b) An agreement to participate in periodic evaluations of the expanded learning opportunity program, to be specified by the department;

(c) Evidence that the proposed expanded learning opportunity program will be coordinated or contracted with existing programs;

(d) A plan to coordinate and use a combination of local, state, philanthropic, and federal funding sources, including, but not limited to, funding available through the federal No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq., as such act and sections existed on January 1, 2015, funds allocated pursuant to section 9-812, and funds from any other source designated or appropriated for

purposes of the program. Funding provided by the Expanded Learning Opportunity Grant Program shall be matched on a one-to-one basis by community or partner contributions;

(e) A plan to use sliding-fee scales and the funding sources included in subdivision (d) of this subsection;

(f) An advisory body which includes families and community members;

(g) Appropriately qualified staff;

(h) An appropriate child-to-staff ratio;

(i) Compliance with minimum health and safety standards;

(j) A strong family development and support component, recognizing the central role of parents in their children's development; and

(k) Developmentally and culturally appropriate practices and assessments.

(2) The proposal shall demonstrate how the expanded learning opportunity program will provide participating students with academic enrichment and expanded learning opportunities that are high quality, based on proven methods, if appropriate, and designed to complement students' regular academic programs. Such activities shall include two or more of the following:

(a) Core education subjects of reading, writing, mathematics, and science;

(b) Academic enrichment learning programs, including provision of additional assistance to students to allow the students to improve their academic achievement;

(c) Science, technology, engineering, and mathematics (STEM) education;

(d) Sign language, foreign language, and social studies instruction;

(e) Remedial education activities;

(f) Tutoring services, including, but not limited to, tutoring services provided by senior citizen volunteers;

(g) Arts and music education;

(h) Entrepreneurial education programs;

(i) Telecommunications and technology education programs;

(j) Programs for English language learners that emphasize language skills and academic achievement;

(k) Mentoring programs;

(l) Recreational activities;

(m) Expanded library service hours;

(n) Programs that provide assistance to students who have been truant, suspended, or expelled to allow such students to improve their academic achievement;

(o) Drug abuse prevention and violence prevention programs;

(p) Character education programs;

(q) Health and nutritional services;

(r) Behavioral health counseling services; and

(s) Programs that promote parental involvement and family literacy.

(3) A proposal shall: (a) Demonstrate specifically how its activities are expected to improve student academic achievement; (b) demonstrate that its activities will be provided by organizations in partnership with the school that

have experience or the promise of success in providing educational and related activities that will complement and enhance the academic performance, achievement, and positive development of the students; and (c) demonstrate that the expanded learning opportunity program aligns with the school district learning objectives and behavioral codes. Nothing in this subsection shall be construed to require an expanded learning opportunity program to provide academic services in specific subject areas.

(4) The department shall make an effort to fund expanded learning opportunity programs in both rural and urban areas of the state. The department shall award grants to proposals that offer a broad array of services, programs, and activities.

**Source:** Laws 2015, LB519, § 20.

**79-2507 School district; inform nonpublic school of potential participation.**

A school district participating in an expanded learning opportunity program shall inform an authorized representative or designee of each nonpublic school geographically located within each public school building's attendance area regarding potential participation in an expanded learning opportunity program.

**Source:** Laws 2015, LB519, § 21.

**79-2508 Grantees; duties.**

Grantees receiving funds pursuant to the Expanded Learning Opportunity Grant Program shall cooperate with evaluators and supervise the administration and collection of student, teacher, parent, and collaboration surveys. Grantees shall also designate a qualified evaluation professional or local evaluation support to ensure data collection, perform annual self-assessments, monitor program progress, and assist in developing local evaluation reports.

**Source:** Laws 2015, LB519, § 22.

**79-2509 Report.**

The department shall provide a report evaluating the expanded learning opportunity programs to the Legislature by January 1 of each odd-numbered year. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 2015, LB519, § 23.

**79-2510 Expanded Learning Opportunity Grant Fund; created; use; investment; rules and regulations.**

(1) The Expanded Learning Opportunity Grant Fund is created. The fund shall be administered by the department and shall consist of transfers pursuant to section 9-812, repayments of grant funds, and interest payments received in the course of administering the Expanded Learning Opportunity Grant Program Act. The fund shall be used to carry out the Expanded Learning Opportunity Grant Program 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.

(2) The State Board of Education, in consultation with the department, may adopt and promulgate rules and regulations to carry out the Expanded Learning Opportunity Grant Program Act.

**Source:** Laws 2015, LB519, § 24.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**ARTICLE 26**

**NEBRASKA READING IMPROVEMENT ACT**

**Section**

79-2601. Act, how cited.

79-2602. Legislative intent.

79-2603. Approved reading assessment; school district administer.

79-2604. Reading deficiency; identification.

79-2605. Supplemental reading intervention program; school district; duties.

79-2606. Notification to parent or guardian; individualized reading improvement plan.

79-2607. State Department of Education; powers; rules and regulations.

**79-2601 Act, how cited.**

Sections 79-2601 to 79-2607 shall be known and may be cited as the Nebraska Reading Improvement Act.

**Source:** Laws 2018, LB1081, § 20.

Effective date July 19, 2018.

**79-2602 Legislative intent.**

It is the intent of the Legislature that:

(1) School boards develop policies to facilitate reading instruction and intervention services to address student reading needs, including, but not limited to, dyslexia;

(2) All teachers for kindergarten through grade three should be effective reading teachers as evidenced by (a) evaluations based on classroom observations and student improvement on reading assessments or (b) specialized training in reading improvement;

(3) Each student and his or her parents or guardians be informed of the student's reading progress; and

(4) Each student in a public school be able to read at or above grade level by third grade.

**Source:** Laws 2018, LB1081, § 21.

Effective date July 19, 2018.

**79-2603 Approved reading assessment; school district administer.**

(1) For school year 2019-20 and each school year thereafter, each school district shall administer an approved reading assessment three times during the school year to all students in kindergarten through grade three, except for any student receiving specialized instruction for limited English proficiency who has been receiving such instruction for less than two years, any student receiving special education services for whom such assessment would conflict with the individualized education plan, and any student receiving services

under a plan pursuant to the requirements of section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. 794, or Title II of the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12131 to 12165, as such acts and sections existed on January 1, 2018, for whom such assessment would conflict with such section 504 or Title II plan. The first administration of such assessment for each such school year shall occur within the first thirty days of the school year.

(2) For purposes of the Nebraska Reading Improvement Act, an approved reading assessment means an assessment of student reading skills approved by the State Department of Education which:

(a) Measures progress toward proficiency in the reading skills assessed pursuant to subsection (5) of section 79-760.03 on the statewide assessment of reading for grade three;

(b) Is valid and reliable;

(c) Is aligned with academic content standards for reading adopted by either the State Board of Education pursuant to section 79-760.01 or the school district administering such assessment pursuant to section 79-760.02;

(d) Allows teachers access to results in a reasonable time period as established by the department, not to exceed fifteen working days; and

(e) Is commercially available and complies with requirements established by the department.

(3) On or before March 1, 2019, and on or before each March 1 thereafter, the department shall make public the list of approved reading assessments for the subsequent school year and the threshold level of performance for each such assessment. A student performing below the threshold level shall be identified as having a reading deficiency for purposes of the Nebraska Reading Improvement Act.

(4) Diagnostic assessments used within a supplemental reading intervention program do not require department approval.

**Source:** Laws 2018, LB1081, § 22.

Effective date July 19, 2018.

#### **79-2604 Reading deficiency; identification.**

(1) Any student in kindergarten, grade one, grade two, or grade three shall be identified as having a reading deficiency if such student performs below the threshold level determined pursuant to section 79-2603 on an approved reading assessment. A student who is identified as having a reading deficiency pursuant to this subsection shall remain identified as having a reading deficiency until the student performs at or above the threshold level on an approved reading assessment.

(2) Nothing in the Nebraska Reading Improvement Act shall prohibit a school district from identifying any other student as having a reading deficiency.

**Source:** Laws 2018, LB1081, § 23.

Effective date July 19, 2018.

#### **79-2605 Supplemental reading intervention program; school district; duties.**

(1) Each school district shall provide a supplemental reading intervention program for the purpose of ensuring that students can read at or above grade

level at the end of third grade. School districts may work collaboratively with a reading specialist at the State Department of Education, with educational service units, with learning communities, or through interlocal agreements to develop and provide such supplemental reading intervention programs. Each supplemental reading intervention program shall:

(a) Be provided to any student identified as having a reading deficiency;

(b) Be implemented during regular school hours in addition to regularly scheduled reading instruction unless otherwise agreed to by a parent or guardian; and

(c) Make available a summer reading program each summer for any student who has been enrolled in grade one or higher and is identified as continuing to have a reading deficiency at the conclusion of the school year preceding such summer reading program. Such summer reading program may be held in conjunction with existing summer programs in the school district or in a community reading program not affiliated with the school district or may be offered online.

(2) The supplemental reading intervention program may also include:

(a) Reading intervention techniques that are based on scientific research and best practices;

(b) Diagnostic assessments to frequently monitor student progress throughout the school year and adjust instruction accordingly;

(c) Intensive intervention using strategies selected from the following list to match the weaknesses identified in the diagnostic assessment:

(i) Development in phonemic awareness, phonics, fluency, vocabulary, and reading comprehension;

(ii) Explicit and systematic instruction with detailed explanations, extensive opportunities for guided practice, and opportunities for error corrections and feedback; or

(iii) Daily targeted individual or small-group reading intervention based on student needs as determined by diagnostic assessment data subject to planned extracurricular school activities;

(d) Strategies and resources to assist with reading skills at home, including parent-training workshops and suggestions for parent-guided home reading; or

(e) Access to before-school or after-school supplemental reading intervention with a teacher or tutor who has specialized training in reading intervention.

**Source:** Laws 2018, LB1081, § 24.

Effective date July 19, 2018.

### **79-2606 Notification to parent or guardian; individualized reading improvement plan.**

(1) The school of any student who is identified as having a reading deficiency shall notify such student's parents or guardians either in writing or by electronic communication no later than fifteen working days after the identification of the reading deficiency that the student has been identified as having a reading deficiency and that an individual reading improvement plan will be established and shared with the parents or guardians.

(2) Any student who is identified as having a reading deficiency shall receive an individual reading improvement plan no later than thirty days after the

identification of such reading deficiency. The reading improvement plan may be created by the teacher, the principal, other pertinent school personnel, and the parents or guardians of the student and shall describe the reading intervention services the student will receive through the supplemental reading intervention program pursuant to section 79-2605 to remedy such reading deficiency. Each such student shall receive reading intervention services through the supplemental reading intervention program pursuant to section 79-2605 of this act until the student is no longer identified as having a reading deficiency.

**Source:** Laws 2018, LB1081, § 25.  
Effective date July 19, 2018.

**79-2607 State Department of Education; powers; rules and regulations.**

(1) The State Department of Education may provide technical assistance as needed to assist school boards in carrying out the Nebraska Reading Improvement Act.

(2) The department may adopt and promulgate rules and regulations to carry out the act.

**Source:** Laws 2018, LB1081, § 26.  
Effective date July 19, 2018.



## CHAPTER 80

### SERVICEMEMBERS AND VETERANS

Article.

1. County Veterans Service Committee. 80-104.
2. Memorials. 80-201.
3. Nebraska Veterans Services Act. 80-301.01 to 80-337.
4. Veterans Aid. 80-403 to 80-414.

#### ARTICLE 1

#### COUNTY VETERANS SERVICE COMMITTEE

Section

80-104. Veterans; burial by county veterans service committee; when authorized; surviving relatives may conduct funeral.

**80-104 Veterans; burial by county veterans service committee; when authorized; surviving relatives may conduct funeral.**

Except for cremated remains disposed of as provided in section 71-1382.01, it shall be the duty of the county veterans service committee to cause to be decently interred the body of any person who has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from any arm of the military or naval service of the United States, has served during a period of war, as defined in section 80-401.01, or during a period of actual hostilities in any war or conflict in which the United States Government was engaged prior to April 6, 1917, and may hereafter die without leaving sufficient means to defray his or her funeral expenses. Such burials should not be made in any cemetery or burial grounds used exclusively for the burial of pauper dead. If surviving relatives of the deceased shall desire to conduct the funeral, they shall be permitted to do so.

**Source:** Laws 1885, c. 39, § 1, p. 214; Laws 1905, c. 146, § 1, p. 589; R.S.1913, § 7158; C.S.1922, § 6804; C.S.1929, § 80-107; R.S. 1943, § 80-104; Laws 1953, c. 324, § 4, p. 1072; Laws 1959, c. 420, § 1, p. 1415; Laws 2005, LB 54, § 22; Laws 2015, LB146, § 5.

#### ARTICLE 2

#### MEMORIALS

Section

80-201. Memorials; authority to erect.

**80-201 Memorials; authority to erect.**

All counties, townships, cities, and villages of Nebraska may erect or aid in the erection of statues, monuments, or other memorials commemorating the services of the members of the armed forces of the United States of America to

be located upon the public lands or within the public buildings within such county, township, city, or village.

**Source:** Laws 1919, c. 254, § 1, p. 1031; C.S.1922, § 6812; C.S.1929, § 80-201; R.S.1943, § 80-201; Laws 1987, LB 626, § 1; Laws 2015, LB479, § 1.

### ARTICLE 3

#### NEBRASKA VETERANS SERVICES ACT

##### Section

- 80-301.01. Act, how cited.
- 80-301.03. Terms, defined.
- 80-314. Veterans homes; director; duties; rules and regulations.
- 80-315. Nebraska veterans homes; establishment.
- 80-316. Veterans homes; purpose; admission; requirements.
- 80-317. Nebraska veterans homes; Veterans' Homes Board; rules of membership; application.
- 80-319. Veterans' Homes Board; duties; powers; meetings.
- 80-320. Director; rules and regulations.
- 80-321. Member; payment for care; public expense.
- 80-322. Reimbursement of costs.
- 80-322.01. Department of Veterans' Affairs Cash Fund; created; investment.
- 80-332. Employees of Division of Veterans' Homes of Department of Health and Human Services; transfer; how treated.
- 80-333. Contracts and other documents; how treated.
- 80-334. Existing suits and proceedings; how treated.
- 80-335. Law; how construed.
- 80-336. Property; funds; appropriations; effect of transfer.
- 80-337. Money or personal property to credit of member of veterans home; claim; disposition; procedure.

##### **80-301.01 Act, how cited.**

Sections 80-301.01 to 80-337 shall be known and may be cited as the Nebraska Veterans Services Act.

**Source:** Laws 2017, LB340, § 1; Laws 2018, LB827, § 1.  
Effective date July 19, 2018.

##### **80-301.03 Terms, defined.**

For purposes of the Nebraska Veterans Services Act:

- (1) Department means the Department of Veterans' Affairs;
- (2) Director means the Director of Veterans' Affairs; and
- (3) Veterans homes means the homes listed in section 80-315.

**Source:** Laws 2017, LB340, § 2.

##### **80-314 Veterans homes; director; duties; rules and regulations.**

Effective July 1, 2017, all programs, services, and duties of the Division of Veterans' Homes of the Department of Health and Human Services shall be transferred to the Department of Veterans' Affairs. The department shall be responsible for the management and administration of the veterans homes and the treatment of the members thereof, define the duties of the officers, fix their compensation, and adopt and promulgate rules and regulations. The director shall develop member grievance procedures, family support programs, volun-

teer support, policy, and internal standards. The director shall have access to all confidential information relating to members' care.

**Source:** Laws 1887, c. 82, § 6, p. 626; Laws 1891, c. 49, § 3, p. 343; Laws 1893, c. 33, § 1, p. 361; Laws 1905, c. 145, § 2, p. 586; R.S.1913, § 7305; C.S.1922, § 6960; Laws 1923, c. 183, § 1, p. 424; C.S. 1929, § 80-304; R.S.1943, § 80-304; Laws 1949, c. 272, § 3(1), p. 893; Laws 1959, c. 420, § 2, p. 1416; Laws 1980, LB 184, § 3; Laws 1996, LB 1044, § 831; R.S.1943, (1996), § 80-304; Laws 1997, LB 396, § 3; Laws 2007, LB296, § 718; Laws 2017, LB340, § 3.

### **80-315 Nebraska veterans homes; establishment.**

The Grand Island Veterans' Home, the Norfolk Veterans' Home, the Eastern Nebraska Veterans' Home, and the Western Nebraska Veterans' Home are established. The State of Nebraska shall maintain the homes as provided in the Nebraska Veterans Services Act.

**Source:** Laws 1887, c. 82, § 1, p. 622; Laws 1889, c. 85, § 1, p. 569; Laws 1891, c. 49, § 1, p. 340; Laws 1901, c. 71, § 1, p. 458; R.S.1913, § 7302; Laws 1919, c. 157, § 1, p. 354; C.S.1922, § 6957; C.S. 1929, § 80-301; Laws 1931, c. 153, § 1, p. 412; Laws 1935, c. 172, § 1, p. 627; C.S.Supp.,1941, § 80-301; Laws 1943, c. 211, § 1, p. 696; R.S.1943, § 80-301; Laws 1949, c. 272, § 1, p. 891; Laws 1953, c. 325, § 1, p. 1075; Laws 1959, c. 421, § 1, p. 1417; Laws 1969, c. 753, § 1, p. 2833; Laws 1969, c. 584, § 93, p. 2402; Laws 1971, LB 334, § 1; Laws 1973, LB 33, § 1; Laws 1975, LB 90, § 2; Laws 1979, LB 80, § 112; Laws 1980, LB 184, § 1; Laws 1981, LB 351, § 1; Laws 1991, LB 2, § 23; Laws 1994, LB 1066, § 95; Laws 1994, LB 1194, § 16; R.S.1943, (1996), § 80-301; Laws 1997, LB 396, § 4; Laws 2006, LB 994, § 110; Laws 2017, LB340, § 4.

### **80-316 Veterans homes; purpose; admission; requirements.**

(1) The department shall provide domiciliary and nursing home care and subsistence to:

(a) All persons who served on active duty in the armed forces of the United States other than active duty for training and who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) if, at the time of making an application for admission to one of the Nebraska veterans homes:

(i) The applicant has been a bona fide resident of the State of Nebraska for at least two years;

(ii) The applicant has become disabled due to service, old age, or otherwise to an extent that it would prevent such applicant from earning a livelihood; and

(iii) The applicant's income from all sources is such that the applicant would be dependent wholly or partially upon public charities for support or the type of care needed is available only at a state institution;

(b) The spouse of any such person admitted to one of the homes who has attained the age of fifty years and has been married to such member for at least two years before his or her entrance into the home;

(c) Subject to subsection (2) of this section, the surviving spouses and parents of eligible servicemen and servicewomen as defined in subdivision (a) of this subsection who died while in the service of the United States or who have since died of a service-connected disability as determined by the United States Department of Veterans Affairs; and

(d) Subject to subsection (2) of this section, the surviving spouses of eligible servicemen or servicewomen as defined in subdivision (a) of this subsection who have since died.

(2) The surviving spouses and parents referred to in subdivision (1)(c) or (d) of this section shall be eligible for such care and subsistence if, at the time of applying, they:

(a) Have been bona fide residents of the State of Nebraska for at least two years;

(b) Have attained the age of fifty years;

(c) Are unable to earn a livelihood; and

(d) Are dependent wholly or partially upon public charities or the type of care needed is available only at a state institution.

(3) No one admitted to one of the Nebraska veterans homes under conditions enumerated in this section shall have a vested right to continued residence in such home if such person ceases to meet any of the eligibility requirements of this section, except that no person who has been regularly admitted shall be denied continued residence solely because of his or her marriage to a member of one of the homes.

**Source:** Laws 1997, LB 396, § 5; Laws 2005, LB 54, § 26; Laws 2007, LB296, § 719; Laws 2009, LB488, § 1; Laws 2017, LB340, § 5.

### **80-317 Nebraska veterans homes; Veterans' Homes Board; rules of membership; application.**

The Veterans' Homes Board shall prescribe rules of membership in the Nebraska veterans homes in accordance with the Nebraska Veterans Services Act. An application for membership in a Nebraska veterans home shall be made to a county veterans service officer, to a recognized veterans organization as defined in subdivision (1) of section 80-401.01, or to a Nebraska veterans home, and such officer, organization, or Nebraska veterans home shall coordinate the required financial and medical information and, if necessary, provide an opinion regarding its validity. The county veterans service officer, recognized veterans organization, or Nebraska veterans home shall at once forward the application together with a finding in regard to the condition of the applicant to the board, whose duty it is to receive, review, and act upon applications for membership. During the interim between meetings of the board, the secretary of the board is authorized to adjudicate applications, subject to the approval of the full board at its next meeting.

**Source:** Laws 1887, c. 82, § 1, p. 622; Laws 1889, c. 85, § 1, p. 569; Laws 1891, c. 49, § 1, p. 340; Laws 1901, c. 71, § 1, p. 458; R.S.1913, § 7302; Laws 1919, c. 157, § 1, p. 354; C.S.1922, § 6957; C.S. 1929, § 80-301; Laws 1931, c. 153, § 1, p. 412; Laws 1935, c. 172, § 1, p. 627; C.S.Supp.,1941, § 80-301; Laws 1943, c. 211, § 1, p. 696; R.S.1943, § 80-301; Laws 1949, c. 272, § 1, p. 891; Laws 1953, c. 325, § 1, p. 1075; Laws 1959, c. 421, § 1, p. 1417;

Laws 1969, c. 753, § 1, p. 2833; Laws 1969, c. 584, § 93, p. 2402; Laws 1971, LB 334, § 1; Laws 1973, LB 33, § 1; Laws 1975, LB 90, § 2; Laws 1980, LB 184, § 2; Laws 1995, LB 64, § 1; R.S.1943, (1996), § 80-302; Laws 1997, LB 396, § 6; Laws 2007, LB296, § 720; Laws 2012, LB795, § 1; Laws 2017, LB340, § 6.

#### Cross References

For official name of homes, see section 83-107.01.

### **80-319 Veterans' Homes Board; duties; powers; meetings.**

The Veterans' Homes Board shall meet at least quarterly and at other times at the request of either the chairperson or the secretary of the board at a site selected by the secretary after consultation with the chairperson. The board shall review all applications submitted for admission to the Nebraska veterans homes system and shall make all final determinations regarding admission, or continued admission, to one of the homes. The board may check periodically on members of the Nebraska veterans homes to determine whether or not their physical or financial status has so changed since admission that they should no longer be maintained there. The board has power to subpoena witnesses and take testimony under oath relative to the duties of the board. No specified amount, either as to income or accumulated reserve, shall be arbitrarily fixed for determining the eligibility of an applicant to membership or to continuing rights of membership, but each case shall be considered solely on its merits and the evidence presented. The department shall consult with the board prior to denying further residence to members the board finds should no longer be supported there.

**Source:** Laws 1949, c. 272, § 4(2), p. 894; Laws 1953, c. 325, § 2, p. 1076; Laws 1971, LB 334, § 3; Laws 1980, LB 184, § 6; Laws 1996, LB 1044, § 832; R.S.1943, (1996), § 80-306; Laws 1997, LB 396, § 8; Laws 2007, LB296, § 722; Laws 2017, LB340, § 7.

### **80-320 Director; rules and regulations.**

(1) Nothing in the Nebraska Veterans Services Act shall be construed as limiting the authority vested with the director to adopt and promulgate rules and regulations, not inconsistent with the act, for the administration of the Nebraska veterans homes. The department, in conjunction and after consultation with the Veterans' Homes Board, shall adopt and promulgate rules and regulations governing admission to and administration of the homes.

(2) All rules, regulations, and orders of the Division of Veterans' Homes of the Department of Health and Human Services or its predecessor agencies adopted prior to July 1, 2017, in connection with the powers, duties, and functions transferred to the Department of Veterans' Affairs pursuant to the Nebraska Veterans Services Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

**Source:** Laws 1909, c. 134, § 1, p. 482; R.S.1913, § 7306; C.S.1922, § 6961; C.S.1929, § 80-305; R.S.1943, § 80-305; Laws 1949, c. 272, § 4(3), p. 894; Laws 1953, c. 325, § 3, p. 1077; Laws 1980, LB 184, § 7; Laws 1996, LB 1044, § 833; R.S.1943, (1996), § 80-307; Laws 1997, LB 396, § 9; Laws 2007, LB296, § 723; Laws 2017, LB340, § 8.

**80-321 Member; payment for care; public expense.**

Nothing in the Nebraska Veterans Services Act shall be construed to deny any person who has been properly admitted to one of the Nebraska veterans homes the privilege of paying the cost of his or her care, or any part thereof, if he or she so desires or if it has been determined by the Veterans' Homes Board that his or her financial status is such that he or she should no longer be maintained there at public expense.

**Source:** Laws 1891, c. 49, § 7, p. 346; Laws 1909, c. 134, § 1, p. 482; R.S.1913, § 7306; C.S.1922, § 6961; C.S.1929, § 80-305; R.S. 1943, § 80-305; Laws 1949, c. 272, § 5, p. 895; Laws 1971, LB 334, § 4; Laws 1980, LB 184, § 8; R.S.1943, (1996), § 80-308; Laws 1997, LB 396, § 10; Laws 2007, LB296, § 724; Laws 2017, LB340, § 9.

**80-322 Reimbursement of costs.**

Any veteran, spouse, surviving spouse, or parent admitted to one of the Nebraska veterans homes under section 80-316 who has an income in excess of forty dollars per month, including federal pension, compensation, or social security, or has sufficient assets will be required to reimburse the state monthly a reasonable amount for the expense of his or her maintenance. The amount shall be determined by the Veterans' Homes Board. All money paid to the state by members of the Nebraska veterans homes in compliance with this section shall be remitted to the State Treasurer for credit to the Department of Veterans' Affairs Cash Fund. The State Treasurer shall transfer any money remaining in the Health and Human Services Cash Fund on July 1, 2017, that was credited to the fund pursuant to this section to the Department of Veterans' Affairs Cash Fund.

**Source:** Laws 1997, LB 396, § 11; Laws 2007, LB296, § 725; Laws 2017, LB340, § 10.

**80-322.01 Department of Veterans' Affairs Cash Fund; created; investment.**

The Department of Veterans' Affairs Cash Fund is created. The fund shall include money transferred pursuant to section 80-322. The department shall administer the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2017, LB340, § 11.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**80-332 Employees of Division of Veterans' Homes of Department of Health and Human Services; transfer; how treated.**

On and after July 1, 2017, positions of employment in the Division of Veterans' Homes of the Department of Health and Human Services related to the powers, duties, and functions transferred pursuant to the Nebraska Veterans Services Act are transferred to the Department of Veterans' Affairs. For purposes of the transition, employees of the division shall be considered employees of the department and shall retain their rights under the state

personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the department or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

**Source:** Laws 2017, LB340, § 12.

#### **80-333 Contracts and other documents; how treated.**

On and after July 1, 2017, whenever the Division of Veterans' Homes of the Department of Health and Human Services is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Department of Veterans' Affairs pursuant to the Nebraska Veterans Services Act, such reference or designation shall apply to such department. All contracts entered into by the division prior to July 1, 2017, in connection with the duties and functions transferred to the department are hereby recognized, with the department succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the department for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the department for all legal purposes.

**Source:** Laws 2017, LB340, § 13.

#### **80-334 Existing suits and proceedings; how treated.**

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Division of Veterans' Homes of the Department of Health and Human Services, or the director or any employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Division of Veterans' Homes of the Department of Health and Human Services to the Department of Veterans' Affairs.

**Source:** Laws 2017, LB340, § 14.

#### **80-335 Law; how construed.**

On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Division of Veterans' Homes of the Department of Health and Human Services in connection with duties and functions transferred to the Department of Veterans' Affairs, such law shall be construed as referring to the department.

**Source:** Laws 2017, LB340, § 15.

#### **80-336 Property; funds; appropriations; effect of transfer.**

On July 1, 2017, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Division of Veterans' Homes of the Department of Health and Human Services pertaining

to the duties and functions transferred to the Department of Veterans' Affairs pursuant to the Nebraska Veterans Services Act shall become the property of the department.

On July 1, 2017, any federal, cash, canteen, and trust funds remaining in the following program classifications shall be transferred from Agency No. 25, the Department of Health and Human Services, to Agency No. 28, the Department of Veterans' Affairs: Program No. 510, Veterans' Home System Administration; Program No. 519, Grand Island Veterans' Home; Program No. 520, Norfolk Veterans' Home; Program No. 521, Western Nebraska Veterans' Home; and Program No. 522, Eastern Nebraska Veterans' Home.

Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Fifth Legislature, First Session, to Agency No. 25, Department of Health and Human Services, in the following program classification, shall be null and void, and any such amounts are hereby appropriated to Agency No. 28, Department of Veterans' Affairs: Program No. 519, Nebraska Veterans' Homes. Any financial obligations of the Department of Health and Human Services for Program No. 519, Nebraska Veterans' Homes, that remain unpaid as of June 30, 2017, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Department of Veterans' Affairs from the unexpended balance of appropriations existing in such program classification on June 30, 2017.

**Source:** Laws 2017, LB340, § 16.

**80-337 Money or personal property to credit of member of veterans home; claim; disposition; procedure.**

Any claim to money or personal property in the hands of the department to the credit of a member of a veterans home shall be disposed of as provided in sections 83-153 to 83-156.

**Source:** Laws 2018, LB827, § 2.  
Effective date July 19, 2018.

**ARTICLE 4  
VETERANS AID**

Section

- 80-403. Veterans relief; persons eligible; disbursements.
- 80-410. Director; deputy director; Veterans' Advisory Commission; state and county veterans service officers; qualifications.
- 80-411. Waiver of tuition and fees at institutions of higher education; qualifications; application; Director of Veterans' Affairs; approval; effect.
- 80-413. Land used for veterans services; retrocession of jurisdiction.
- 80-414. Department of Veterans' Affairs; create and maintain registry; contents; notation of "veteran" on operator's license or state identification card; eligibility.

**80-403 Veterans relief; persons eligible; disbursements.**

(1) All money disbursed through the Director of Veterans' Affairs shall be expended by him or her in furnishing food, shelter, fuel, transportation, wearing apparel, or medical or surgical aid or in assisting with the funeral expenses of discharged veterans who come within one of the classes described in subsection (2) or (3) of this section.



(2) Such aid shall be provided upon application to veterans as defined in section 80-401.03, their widows, widowers, spouses, and their children age eighteen or younger or until age twenty-three if attending school full time, and at any age if the child was permanently incapable of self-support at age eighteen (a) who are legal residents of this state on the date of such application and (b) who may be in need of such aid.

(3) In cases in which an eligible veteran or widow or widower dies leaving no next of kin to apply for payment of expenses of last illness and burial, a recognized veterans organization or a county veterans service officer may apply, on behalf of the deceased, for assistance in paying such expenses. All such payments shall be made by the director. There may be expended, for purposes other than those set forth in this section, such sum or sums as may be specifically appropriated by the Legislature for such purposes.

**Source:** Laws 1921, c. 40, § 2, p. 182; C.S.1922, § 6207; Laws 1923, c. 126, § 2, p. 312; Laws 1927, c. 194, § 2, p. 554; C.S.1929, § 80-402; R.S.1943, § 80-402; Laws 1945, c. 221, § 2, p. 660; Laws 1947, c. 306, § 13, p. 932; Laws 1951, c. 305, § 1, p. 999; Laws 1963, c. 498, § 1, p. 1589; Laws 1967, c. 562, § 2, p. 1854; Laws 1967, c. 561, § 3, p. 1851; Laws 1969, c. 754, § 7, p. 2840; Laws 1971, LB 336, § 1; Laws 1979, LB 80, § 113; Laws 1997, LB 441, § 2; Laws 1999, LB 227, § 1; Laws 2008, LB904, § 1; Laws 2015, LB305, § 1.

**80-410 Director; deputy director; Veterans' Advisory Commission; state and county veterans service officers; qualifications.**

(1) The Director of Veterans' Affairs, the deputy director, all members of the Veterans' Advisory Commission, and all state service officers shall have served in the armed forces of the United States during the dates set forth in section 80-401.01 and shall have been discharged or otherwise separated with a characterization of honorable from such service. A state service officer shall have been a bona fide resident of the State of Nebraska continuously for at least one year immediately prior to assuming his or her position.

(2) All county veterans service officers shall have served on active duty in the armed forces of the United States, other than active duty for training, shall have been discharged or otherwise separated with a characterization of honorable from the service, and shall have been bona fide residents of the State of Nebraska continuously for at least one year immediately prior to assuming any such position, except that if there is no applicant for county veterans service officer in a county who will have been a bona fide resident of the State of Nebraska continuously for at least one year prior to assuming such position, the one-year residency requirement may be waived.

(3) All members of the county veterans service committees and all personnel, except certain special and clerical help, of the county veterans service offices shall have all of the qualifications described in subsection (2) of this section, except that such persons may have been discharged or otherwise separated with a characterization of general (under honorable conditions).

**Source:** Laws 1947, c. 306, § 18, p. 934; Laws 1953, c. 326, § 4, p. 1080; Laws 1967, c. 563, § 3, p. 1857; Laws 1969, c. 754, § 9, p. 2842; Laws 2005, LB 54, § 33; Laws 2009, LB52, § 1; Laws 2014, LB737, § 1; Laws 2016, LB677, § 1.

## Cross References

Director, qualifications of, see section 80-401.02.

Veterans' Advisory Commission, qualifications of members, see section 80-401.06.

**80-411 Waiver of tuition and fees at institutions of higher education; qualifications; application; Director of Veterans' Affairs; approval; effect.**

(1) If the requirements of subsection (2) of this section are met, the University of Nebraska, the state colleges, and the community colleges shall waive the following for a dependent of a veteran:

(a) All tuition; and

(b) All fees remaining due after subtracting awarded federal financial aid grants and state scholarships and grants.

(2) A person shall be eligible for the waiver of tuition and such fees if he or she meets the following requirements:

(a) He or she is a resident of this state and meets the appropriate institution's requirements for establishing residency for the purpose of paying instate tuition;

(b) He or she has a parent, stepparent, or spouse who was a member of the armed forces of the United States and who:

(i) Died of a service-connected disability;

(ii) Died subsequent to discharge as a result of injury or illness sustained while a member of the armed forces which may or may not have resulted in total disability;

(iii) Is permanently and totally disabled as a result of military service. Permanent and total disability does not include total ratings or other temporary ratings except total ratings based on individual unemployability if permanent; or

(iv) While a member of the armed forces of the United States, is classified as missing in action or as a prisoner of war during armed hostilities; and

(c) If he or she is a child or stepchild of a person described in subdivision (2)(b) of this section, he or she is under the age of twenty-six years unless he or she serves on active duty with the armed forces after his or her eighteenth birthday but before his or her twenty-sixth birthday, in which case such period shall end five years after his or her first discharge or release from such duty with the armed forces, but in no event shall such period be extended beyond the thirty-first birthday.

(3) An application for a waiver shall be submitted on a form to be prescribed by the Director of Veterans' Affairs.

(4) If the director determines that the applicant is eligible for the waiver, the director shall so certify to the institution in which the applicant desires to enroll. The decision of the director shall, in the absence of fraud or misrepresentation on the part of the applicant, be final and shall be binding upon the applicant and upon the institutions specified in this section. The director shall adopt and promulgate reasonable rules and regulations for the administration of this section.

(5) The waiver shall be valid for one degree, diploma, or certificate from a community college and one baccalaureate degree. Receipt of such degree,

diploma, or certificate from a community college shall precede receipt of such baccalaureate degree.

**Source:** Laws 1965, c. 576, § 1, p. 1867; Laws 1967, c. 564, § 1, p. 1858; Laws 1973, LB 307, § 1; Laws 1975, LB 90, § 4; Laws 1979, LB 80, § 114; Laws 1993, LB 74, § 1; Laws 1999, LB 227, § 2; Laws 2001, LB 368, § 3; Laws 2013, LB180, § 1; Laws 2016, LB718, § 1.

**Cross References**

**Educational assistance for military personnel**, see Chapter 80, article 9, and sections 85-505 to 85-508.

**80-413 Land used for veterans services; retrocession of jurisdiction.**

(1) The consent of the State of Nebraska is hereby given to the retrocession of jurisdiction, either partially or wholly, by the Veterans' Administration, an agency of the United States Government, over land owned by the United States within the boundaries of Nebraska, and the Governor of the state is hereby authorized to accept for the state such retrocession of jurisdiction.

(2) Retrocession of jurisdiction shall be effected upon written notice to the Governor by the principal officer of the Veterans' Administration having supervision and control over the land.

(3) This section shall apply only to the following lands:

(a) Land on which is located the Veterans' Administration Hospital, Omaha, Nebraska;

(b) Land on which is located the Veterans' Administration Hospital, Lincoln, Nebraska;

(c) Land on which is located the Veterans' Administration Hospital, Grand Island, Nebraska;

(d) Land on which is located the Fort McPherson National Cemetery, Maxwell, Nebraska; and

(e) Land on which is located the Omaha National Cemetery, Sarpy County, Nebraska.

**Source:** Laws 1975, LB 391, § 1; Laws 2015, LB640, § 1.

**80-414 Department of Veterans' Affairs; create and maintain registry; contents; notation of "veteran" on operator's license or state identification card; eligibility.**

(1) The Department of Veterans' Affairs shall create and maintain a registry of residents of Nebraska who meet the requirements of subsection (1) of section 60-3,122.04 or subsection (1) of section 60-4,189. The Department of Veterans' Affairs may adopt and promulgate rules and regulations governing the establishment and maintenance of the registry. The registry may be used to assist the department in carrying out the duties of the department and shall provide for the collection of sufficient information to identify an individual who qualifies for Military Honor Plates or a notation of "veteran" on his or her operator's license or state identification card issued by the Department of Motor Vehicles. The registry may include information such as identifying information on an individual, an individual's records on active duty or reserve duty in the armed forces of the United States, or an individual's status of active duty, reserve duty, retired, discharged, or other.

(2) Any resident of Nebraska who meets the requirements of subsection (1) of section 60-3,122.04 or subsection (1) of section 60-4,189 shall register with the Department of Veterans' Affairs using the registry created by this section before being eligible for Military Honor Plates or a notation of "veteran" on his or her operator's license or state identification card issued by the Department of Motor Vehicles. No person shall be deemed eligible until his or her status has been verified on the registry.

(3) The Department of Motor Vehicles may adopt and promulgate rules and regulations governing use of the registry of the Department of Veterans' Affairs for determination of eligibility for the issuance of Military Honor Plates or the notation of "veteran" on operators' licenses and state identification cards.

**Source:** Laws 2013, LB93, § 6; Laws 2014, LB383, § 11; Laws 2017, LB45, § 3.

## CHAPTER 81

### STATE ADMINISTRATIVE DEPARTMENTS

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## ARTICLE 1

### THE GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

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- 81-101. Executive department; civil administration vested in Governor; departments created.
- 81-102. Department heads; enumeration; appointment and confirmation; removal.
- 81-118.02. State purchasing card program; created; requirements; State Treasurer and Director of Administrative Services; duties.

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## (a) GENERAL PROVISIONS

**81-101 Executive department; civil administration vested in Governor; departments created.**

The civil administration of the laws of the state is vested in the Governor. For the purpose of aiding the Governor in the execution and administration of the laws, the executive and administrative work shall be divided into the following agencies: (1) Department of Agriculture; (2) Department of Labor; (3) Department of Transportation; (4) Department of Natural Resources; (5) Department of Banking and Finance; (6) Department of Insurance; (7) Department of Motor Vehicles; (8) Department of Administrative Services; (9) Department of Economic Development; (10) Department of Correctional Services; (11) Nebraska State Patrol; and (12) Department of Health and Human Services.

**Source:** Laws 1929, c. 51, § 1, p. 209; C.S.1929, § 81-101; Laws 1933, c. 149, § 1, p. 571; C.S.Supp.,1941, § 81-101; R.S.1943, § 81-101; Laws 1955, c. 329, § 4, p. 1027; Laws 1957, c. 365, § 8, p. 1236; Laws 1957, c. 366, § 51, p. 1282; Laws 1959, c. 424, § 1, p. 1423; Laws 1961, c. 415, § 29, p. 1259; Laws 1961, c. 416, § 9, p. 1267; Laws 1963, c. 504, § 1, p. 1609; Laws 1969, c. 778, § 1, p. 2949; Laws 1973, LB 563, § 16; Laws 1976, LB 561, § 4; Laws 1981, LB 541, § 4; Laws 1991, LB 58, § 2; Laws 1996, LB 1044, § 835; Laws 1999, LB 36, § 35; Laws 2000, LB 900, § 246; Laws 2007, LB296, § 726; Laws 2007, LB334, § 102; Laws 2017, LB339, § 272.

**Cross References**

**Department of Administrative Services**, see section 81-1103.

**Department of Correctional Services**, see section 83-171.

**Department of Economic Development**, see section 81-1201.02.

**Department of Environmental Quality**, see section 81-1502.

**Department of Health and Human Services**, see section 81-3113.

**Department of Revenue**, see section 77-360.

**Department of Veterans' Affairs**, see section 80-401.02.

**Military Department**, see section 55-120.

**Nebraska State Patrol**, see section 81-2001.

**State Department of Education**, see section 79-301 and Article VII, section 2, Constitution of Nebraska.

**81-102 Department heads; enumeration; appointment and confirmation; removal.**

The Governor shall appoint heads for the various agencies listed in section 81-101, subject to confirmation by a majority vote of the members elected to the Legislature. Such appointments shall be submitted to the Legislature within sixty calendar days following the first Thursday after the first Tuesday in each odd-numbered year. The officers shall be designated as follows: (1) The Director of Agriculture for the Department of Agriculture; (2) the Commissioner of Labor for the Department of Labor; (3) the Director-State Engineer for the Department of Transportation; (4) the Director of Natural Resources for the Department of Natural Resources; (5) the Director of Banking and Finance for

the Department of Banking and Finance; (6) the Director of Insurance for the Department of Insurance; (7) the Director of Motor Vehicles for the Department of Motor Vehicles; (8) the Director of Administrative Services for the Department of Administrative Services; (9) the Director of Correctional Services for the Department of Correctional Services; (10) the Director of Economic Development for the Department of Economic Development; (11) the Superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol; (12) the Property Tax Administrator as the chief administrative officer of the property assessment division of the Department of Revenue; and (13) the chief executive officer for the Department of Health and Human Services. Whoever shall be so nominated by the Governor and shall fail to receive the number of votes requisite for confirmation, shall not be subject to nomination or appointment for this or any other appointive state office requiring confirmation by the Legislature during the period for which his or her appointment was sought. In case of a vacancy in any of such offices during the recess of the Legislature, the Governor shall make a temporary appointment until the next meeting of the Legislature, when he or she shall nominate some person to fill such office. Any person so nominated who is confirmed by the Legislature, shall hold his or her office during the remainder of the term if a specific term has been provided by law, otherwise during the pleasure of the Governor subject to the provisions of this section; except any such officers may be removed by the Governor pursuant to Article IV of the Constitution of Nebraska.

**Source:** Laws 1929, c. 51, § 2, p. 209; C.S.1929, § 81-102; Laws 1933, c. 149, § 2, p. 571; Laws 1941, c. 177, § 1, p. 695; C.S.Supp.,1941, § 81-102; R.S.1943, § 81-102; Laws 1953, c. 335, § 1, p. 1100; Laws 1957, c. 365, § 9, p. 1237; Laws 1957, c. 366, § 52, p. 1282; Laws 1961, c. 415, § 30, p. 1260; Laws 1961, c. 416, § 10, p. 1268; Laws 1963, c. 504, § 2, p. 1609; Laws 1969, c. 778, § 2, p. 2950; Laws 1969, c. 514, § 4, p. 2105; Laws 1973, LB 563, § 17; Laws 1976, LB 561, § 5; Laws 1981, LB 249, § 4; Laws 1981, LB 541, § 5; Laws 1982, LB 404, § 34; Laws 1996, LB 1044, § 836; Laws 1999, LB 36, § 36; Laws 2000, LB 900, § 247; Laws 2007, LB296, § 727; Laws 2007, LB334, § 103; Laws 2017, LB339, § 273.

**81-118.02 State purchasing card program; created; requirements; State Treasurer and Director of Administrative Services; duties.**

(1) A state purchasing card program shall be created. The State Treasurer and the Director of Administrative Services shall determine the type of purchasing card or cards utilized in the state purchasing 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 the state purchasing card program on behalf of the state and those political subdivisions that participate in the state contract for such services. After the state purchasing card program has been in existence for two years, a joint report issued from the State Treasurer and the director shall be submitted to the Legislature and the Governor not later than January 1, 2001. The report shall include, but not be limited to, the utilization, costs, and benefits of the program. The state purchasing card program shall be administered by the Department of Administrative Services. The department may adopt and promulgate rules and regulations as



needed for the implementation of the state purchasing card program. The department may adopt and promulgate rules and regulations providing authorization instructions for all transactions. Expenses associated with the state purchasing card program shall be considered, for purposes of this section, as an administrative or operational expense.

(2) Any state official, state agency, or political subdivision may utilize the state purchasing card program for the purchase of goods and services for and on behalf of the State of Nebraska.

(3) Vendors accepting the state's purchasing card shall obtain authorization for all transactions in accordance with the department's authorization instructions. 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 department for each state official, state agency, or political subdivision.

(4) An itemized receipt for purposes of tracking expenditures shall accompany all state purchasing card purchases. In the event that an itemized receipt does not accompany such a purchase, the Department of Administrative Services shall have the authority to temporarily or permanently suspend state purchasing card purchases in accordance with rules and regulations adopted and promulgated by the department.

(5) Upon the termination or suspension of employment of an individual using a state purchasing card, such individual's state purchasing card account shall be immediately closed and he or she shall return the state purchasing card to the department or agency from which it was obtained.

(6) No officer or employee of the state shall use a state purchasing card for any unauthorized use as determined by the department by rule and regulation.

**Source:** Laws 1999, LB 113, § 1; Laws 2016, LB978, § 1.

## (b) STATE BUDGET

### **81-125.01 State budget; include reserve.**

The Governor, when preparing the budget provided for in section 81-125, and the Legislature, when preparing its proposed budget, shall include a reserve requirement, calculated pursuant to subsection (1) of section 77-2715.01, of not less than three percent of the appropriations included in such budget, except that for the biennium ending June 30, 2019, the percentage shall not be less than two and one-half percent.

**Source:** Laws 1982, LB 757, § 3; Laws 1983, LB 59, § 10; Laws 1985, LB 282, § 2; Laws 2017, LB331, § 43.

### **81-132 State budget; departmental budget estimates; duty to submit; contents; proposed changes; filing.**

(1) All departments, offices, institutions, and expending agencies of the state government requesting appropriations for the next biennium shall file in the office of the Director of Administrative Services the budget forms furnished them by the director under the provisions of sections 81-1113 and 81-1113.01. Such budget forms shall be filed on or before September 15 of each even-

numbered year. The forms shall show their total estimated requirements for the next biennium for each unit of their organization and activity classified as to object of expenditure. With such forms, each department, office, institution, and expending agency shall file a report showing all money received by such department, office, institution, or expending agency together with the estimated receipts for the next biennium. Such estimates shall be accompanied by a statement in writing giving facts and explanations of reasons for each item of increased appropriation requested. The report submitted by the Department of Health and Human Services shall include, but not be limited to, the key goals, benchmarks, and progress reports required pursuant to sections 81-3133 to 81-3133.03.

(2) Any department, office, institution, or expending agency proposing changes to its appropriation for the biennium in progress shall file in the office of the Director of Administrative Services the budget forms for requesting such changes furnished by the director under the provisions of sections 81-1113 and 81-1113.01. Such forms shall be filed on or before October 24 of each odd-numbered year.

**Source:** Laws 1921, c. 210, § 8, p. 748; C.S.1922, § 7275; C.S.1929, § 81-308; R.S.1943, § 81-132; Laws 1978, LB 526, § 3; Laws 1986, LB 258, § 25; Laws 2002, Second Spec. Sess., LB 12, § 2; Laws 2012, LB949, § 2; Laws 2014, LB974, § 4; Laws 2016, LB1092, § 2.

#### (d) MATERIEL DIVISION OF ADMINISTRATIVE SERVICES

##### **81-154 Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids.**

The materiel division shall establish and maintain standard specifications for personal property purchased in the name of the state. The materiel division shall enlist the cooperation and assistance of the using agencies in the establishment, maintenance, and revision of standard specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of personal property may be continuously accomplished. All such standard specifications shall be so drawn that it will be possible for three or more manufacturers, vendors, or suppliers to submit competitive bids. If a requisition for personal property exceeds fifty thousand dollars and bids cannot be obtained from three bidders, then the standard specifications of the personal property upon which bids are sought shall be reviewed by the materiel division and the using agencies involved. If it is determined by the materiel division, because of the special nature of the personal property sought to be purchased or leased or for any other reason, that the standard specifications should remain as written, bids may be accepted from a fewer number of bidders than three with the approval of the Governor or his or her designated representative.

**Source:** Laws 1943, c. 215, § 10, p. 707; R.S.1943, § 81-154; Laws 1963, c. 508, § 7, p. 1618; Laws 1975, LB 359, § 6; Laws 1981, LB 381, § 3; Laws 1984, LB 933, § 12; Laws 1992, LB 1241, § 15; Laws 1997, LB 314, § 5; Laws 2000, LB 654, § 10; Laws 2007, LB256, § 4; Laws 2017, LB320, § 1.

##### **81-161.03 Direct purchases, contracts, or leases; approval required, when; report required; materiel division; duties; Department of Correctional Services; purchases authorized.**

The materiel division may, by written order, permit purchases, contracts, or leases to be made by any using agency directly with the vendor or supplier whenever it appears to the satisfaction of the materiel division that, because of the unique nature of the personal property, the price in connection therewith, the quantity to be purchased, the location of the using agency, the time of the use of the personal property, or any other circumstance, the interests of the state will be served better by purchasing or contracting direct than through the materiel division.

Such permission shall be revocable and shall be operative for a period not exceeding twelve months from the date of issue. Using agencies receiving such permission shall report their acts and expenditures under such orders to the materiel division in writing and furnish proper evidence that competition has been secured at such time and covering such period as may be required by the materiel division.

The materiel division shall adopt and promulgate rules and regulations establishing criteria which must be met by any agency seeking direct market purchase authorization. Purchases for miscellaneous needs may be made directly by any agency without prior approval from the materiel division for purchases of less than twenty-five thousand dollars if the agency has completed a certification program as prescribed by the materiel division.

The Department of Correctional Services may purchase raw materials, supplies, component parts, and equipment perishables directly for industries established pursuant to section 83-183, whether such purchases are made to fill specific orders or for general inventories. Any such purchase shall not exceed fifty thousand dollars. The department shall comply with the bidding process of the materiel division and shall be subject to audit by the materiel division for such purchases.

**Source:** Laws 1943, c. 215, § 16, p. 709; R.S.1943, § 81-160; Laws 1963, c. 508, § 12, p. 1620; Laws 1975, LB 359, § 9; Laws 1975, LB 447, § 5; Laws 1981, LB 381, § 7; Laws 1984, LB 933, § 13; Laws 1987, LB 354, § 1; Laws 1992, LB 1241, § 18; Laws 1997, LB 314, § 6; Laws 2000, LB 654, § 16; Laws 2007, LB256, § 5; Laws 2016, LB1080, § 1; Laws 2017, LB320, § 2.

**81-161.04 Materiel division; surplus property; sale; procedure; proceeds of sale, how credited.**

(1) Whenever any using agency has any personal property for which it no longer has any need or use, it shall notify the materiel division in writing setting forth a description of the property and the approximate length of time that the property has been in the possession of the using agency. The materiel division shall appraise the property and notify all other using agencies of the state that the materiel division has the property for sale and that the property can be bought at the appraised price. No property will be sold until first offered to using agencies as provided by this section unless the property is unusable. If the materiel division fails to receive an offer from any using agency, it may sell or dispose of the property by any method which is most advantageous to the State of Nebraska, including auction, sealed bid, private or public sale, or trade-in for other property, with priorities given to the other political subdivisions. All sales shall be made in the name of the State of Nebraska. The materiel division shall charge an administrative fee for the disposition of surplus property. Such

administrative fee shall be a percentage of the amount of the sale of the surplus property. In the event surplus property is determined to have no market value, the materiel administrator may waive the administrative fee.

(2) Except as otherwise provided in this subsection, the proceeds of the sales shall be deposited with the State Treasurer and credited to the General Fund unless the using agency certifies to the materiel division that the property was purchased in part or in total from either cash accounts or federal funds or from a percentage of such accounts or funds, in which case the proceeds of the sale to that extent shall be credited to the cash or federal account in the percentage used in originally purchasing the property. The cost of selling surplus property shall be deducted from the proceeds of the surplus property sold. The proceeds received from the sale of passenger-carrying motor vehicles originally purchased with money from the General Fund, other than passenger-carrying motor vehicles used by the Nebraska State Patrol, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Transportation Services Bureau Revolving Fund. The proceeds received from the sale of passenger-carrying motor vehicles used by the Nebraska State Patrol, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Nebraska State Patrol Vehicle Replacement Cash Fund. The proceeds received from the sale of micrographic equipment, other than that of the University of Nebraska and state colleges, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Records Management Micrographics Services Revolving Fund. The proceeds received from the sale of aircraft, less selling costs, shall be deposited in the state treasury and credited by the State Treasurer to the Aeronautics Cash Fund.

**Source:** Laws 1943, c. 215, § 9, p. 706; R.S.1943, § 81-153; Laws 1947, c. 310, § 1(2), p. 943; Laws 1951, c. 313, § 1, p. 1071; R.R.S.1943, § 81-153.01; Laws 1963, c. 508, § 13, p. 1621; Laws 1969, c. 781, § 1, p. 2958; Laws 1972, LB 1452, § 1; Laws 1975, LB 447, § 6; Laws 1979, LB 559, § 17; Laws 1979, LB 590, § 1; Laws 1995, LB 381, § 1; Laws 2000, LB 654, § 17; Laws 2017, LB339, § 274.

**81-161.05 Materiel administrator or employee; financial or beneficial personal interest forbidden; gifts and rebates prohibited; violations; penalty.**

Neither the materiel administrator nor any employee under his or her direction shall be financially interested or have any beneficial personal interest, directly or indirectly, in the purchase or leasing of any personal property nor in any firm, partnership, limited liability company, corporation, or association furnishing personal property. No such person shall receive or accept directly or indirectly from any person, firm, limited liability company, or corporation submitting any bid or to whom a contract may be awarded by rebate, gift, or otherwise, any money or other thing of value whatsoever or any promise, obligation, or contract for future reward, or compensation. Any person who violates this section shall be guilty of a Class IV felony and shall be subject to forfeiture of his or her office or position.

**Source:** Laws 1963, c. 508, § 14, p. 1621; Laws 1975, LB 359, § 10; Laws 1977, LB 39, § 265; Laws 1992, LB 1241, § 19; Laws 1993, LB 121, § 523; Laws 2017, LB320, § 3.

## (f) DEFERRED BUILDING RENEWAL AND MAINTENANCE

**81-179 Building Renewal Allocation Fund; created; use; investment.**

(1) There is hereby created under the control of the Governor, for allocation to building renewal projects of the various agencies, a fund to be known as the Building Renewal Allocation Fund. The fund shall contain the revenue from the special privilege tax as provided in section 77-2602 and such other money as is appropriated by the Legislature. Such appropriation is declared to consist of building renewal funds which shall be kept separate and distinct from the program continuation funds and project construction funds.

(2) Separate subfunds, subprograms, projects, or accounts shall be established to separately account for any expenditures on state buildings or facilities to comply with the federal Americans with Disabilities Act of 1990. A minimal amount of the funds contained in the subfunds, subprograms, projects, or accounts may be used for planning and evaluation of buildings and facilities.

(3) The budget division of the Department of Administrative Services may administratively transfer funds to appropriate accounting entities to correctly account for the operating expenditures. A separate fund, cash fund, project, or other account may be administratively established for such purpose.

(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.

(5) The State Treasurer shall transfer seven hundred eighty-three thousand six hundred sixty-seven dollars from the Building Renewal Allocation Fund to the General Fund on or after June 15, 2018, but before June 30, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(6) The State Treasurer shall transfer two hundred thousand dollars from the Building Renewal Allocation Fund to the General Fund on or after June 15, 2019, but before June 30, 2019, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(7) The State Treasurer shall transfer one million seven hundred sixteen thousand three hundred thirty-three dollars from the Building Renewal Allocation Fund to the Accounting Division Cash Fund on July 1, 2017, or as soon thereafter as administratively possible.

(8) The State Treasurer shall transfer two million three hundred thousand dollars from the Building Renewal Allocation Fund to the Accounting Division Cash Fund on July 1, 2018, or as soon thereafter as administratively possible.

**Source:** Laws 1977, LB 309, § 7; Laws 1993, LB 369, § 3; Laws 1994, LB 1066, § 96; Laws 1995, LB 530, § 2; Laws 1996, LB 1190, § 16; Laws 1998, LB 1100, § 15; Laws 2000, LB 1349, § 2; Laws 2002, LB 1310, § 11; Laws 2003, LB 410, § 1; Laws 2004, LB 1090, § 1; Laws 2007, LB323, § 2; Laws 2017, LB331, § 44.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-188.01 State Building Renewal Assessment Fund; created; use; investment.**

(1) The State Building Renewal Assessment Fund is created. The fund shall be under the control of the Governor for allocation to building renewal projects of the various agencies and shall be administered in a manner consistent with the administration of the Building Renewal Allocation Fund pursuant to the Deferred Building Renewal Act. No amounts accruing to the State Building Renewal Assessment Fund shall be expended in any manner for purposes other than as provided in this section or as appropriated by the Legislature to meet the cost of administering the act. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) Revenue credited to the State Building Renewal Assessment Fund shall include amounts derived from charges assessed pursuant to subdivision (4)(b) of section 81-1108.17 and such other revenue as may be incident to the administration of the fund.

(3) Amounts appropriated from the fund shall be expended to conduct renewal work as defined in section 81-173 and to complete other improvements incident to such renewal work as deemed necessary or appropriate by the task force. From amounts accruing to the fund as the result of depreciation charges assessed pursuant to subdivision (4)(b) of section 81-1108.17, expenditures for capital improvements shall be limited to improvements to only those facilities for which such charges have been assessed and remitted. From amounts accruing to the fund as the result of depreciation charges assessed pursuant to section 81-188.02 prior to July 1, 2011, expenditures for capital improvement projects shall be limited to exclude (a) capital improvement projects relating to facilities, structures, or buildings owned, leased, or operated by the (i) University of Nebraska, (ii) Nebraska state colleges, (iii) Department of Transportation, (iv) Game and Parks Commission, or (v) Board of Educational Lands and Funds and (b) capital improvement projects relating to facilities, structures, or buildings for which depreciation charges are assessed pursuant to subdivision (4)(b) of section 81-1108.17.

(4) The State Treasurer shall transfer three million four hundred thirty-two thousand six hundred sixty-seven dollars from the State Building Renewal Assessment Fund to the Accounting Division Cash Fund on July 1, 2017, or as soon thereafter as administratively possible.

(5) The State Treasurer shall transfer four million six hundred thousand dollars from the State Building Renewal Assessment Fund to the Accounting Division Cash Fund on July 1, 2018, or as soon thereafter as administratively possible.

(6) Any money in the State Building Renewal Assessment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1998, LB 1100, § 8; Laws 2000, LB 654, § 22; Laws 2002, LB 1310, § 13; Laws 2002, Second Spec. Sess., LB 1, § 6; Laws 2003, LB 410, § 4; Laws 2004, LB 439, § 15; Laws 2004, LB 1092, § 2; Laws 2009, First Spec. Sess., LB3, § 61; Laws 2011, LB380, § 1; Laws 2017, LB331, § 45; Laws 2017, LB339, § 275.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

DEPARTMENT OF AGRICULTURE

ARTICLE 2

DEPARTMENT OF AGRICULTURE

(m) SEEDS

Section

- 81-2,147.01. Terms, defined.
- 81-2,147.05. Exempt seed or grain.
- 81-2,147.10. Sale of labeled seeds; permit required; fees; delinquency fee; renewal; exceptions; refusal or cancellation of permit; hearing.
- 81-2,155. Hybrid seed corn; practices forbidden.
- 81-2,156. Hybrid seed corn; cross, defined.
- 81-2,157. Hybrid seed corn; violations; penalty; enforcement action; Director of Agriculture; duties.

(n) COMMERCIAL FERTILIZER AND SOIL CONDITIONER

- 81-2,162.02. Terms, defined.
- 81-2,162.04. Soil conditioner; label; contents; bulk; statement; common name; pesticide; how labeled.
- 81-2,162.05. Commercial fertilizer; label affixed to package; contents; common name; custom-blended products; requirements.
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- 81-2,162.27. Fertilizers and Soil Conditioners Administrative Fund; created; use; transfers; investment.

(o) PUBLICITY

- 81-2,163. State agricultural resources, industries, and development; department; publications; powers.
- 81-2,164. Repealed. Laws 2018, LB135, § 4.
- 81-2,164.01. Repealed. Laws 2018, LB135, § 4.
- 81-2,164.02. Repealed. Laws 2018, LB135, § 4.
- 81-2,164.03. Agricultural Products Marketing Information Cash Fund; created; use; investment.

(v) ORGANIC FOOD

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- 81-2,239. Nebraska Pure Food Act; provisions included; how cited.
- 81-2,240. Definitions, where found.
- 81-2,243.01. Egg handler, defined.
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- 81-2,247. Repealed. Laws 2016, LB798, § 14.
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- 81-2,254.01. Repealed. Laws 2016, LB798, § 14.

Section

- 81-2,257. Priority items; priority foundation items; designation.
- 81-2,258. Repealed. Laws 2016, LB798, § 14.
- 81-2,259. Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food; adoption.
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(z) ZONING

- 81-2,294. Conditional use permit or special exception application; department; develop assessment matrix; criteria; committee; advise department; use.

(m) SEEDS

**81-2,147.01 Terms, defined.**

As used in the Nebraska Seed Law:

(1) Advertisement means all representations, other than those on the label, disseminated in any manner or by any means relating to seed, including farm grain represented as suitable for sowing, within the scope of the Nebraska Seed Law;

(2) Agricultural seed includes the seeds of grass, forage, cereal, oil and fiber crops, and lawn and mixtures of such seeds and any other kinds of seed commonly recognized within this state as agricultural seeds and may include the seed of any plant that is being used as an agricultural crop when the Director of Agriculture establishes in rules and regulations that such seed is being used as agricultural seed;

(3) Blend means seeds consisting of more than one variety of a kind, each in excess of five percent by weight of the whole;

(4) Brand means a word, name, symbol, number, or design to identify seed of one person to distinguish it from seed of another person;

(5) Certifying agency means (a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure genetic purity and identity of the seed certified or (b) an agency of a foreign country which is determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification



comparable to those adhered to generally by certifying agencies under subdivision (a) of this subdivision;

(6) Conditioning means drying, cleaning, scarifying, or other operations which could change the purity or germination of the seed and require the seed lot or any definite amount of seed to be retested to determine the label information;

(7) Director means the Director of Agriculture or his or her designated employee or representative or authorized agent;

(8) Dormant seed means viable seeds, other than hard seeds, which fail to germinate when provided the specified germination conditions for the kind of seed in question;

(9) Flower seed includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known and sold under the name of flower or wildflower seeds in this state;

(10) Germination means the emergence and development from the seed embryo of those essential structures which for the kind of seed in question are indicative of the ability to produce a normal plant under favorable conditions;

(11) Hard seed means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat;

(12) Hybrid means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines, (b) one inbred or a single cross with an open-pollinated variety, or (c) two varieties or species except open-pollinated varieties of corn (*Zea mays*). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

(13) Inert matter means all matter not seed which includes broken seeds, sterile florets, chaff, fungus bodies, and stones as established by rules and regulations;

(14) Kind means one or more related species or subspecies which singly or collectively are known by one common name, such as corn, oats, alfalfa, and timothy;

(15) Labeling includes all labels and other written, printed, stamped, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed, whether in bulk or in containers, and includes representations on invoices;

(16) Lot means a definite quantity of seed in containers or bulk identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling;

(17) Mixture, mix, or mixed means seeds consisting of more than one kind, each present in excess of five percent by weight of the whole;

(18) Mulch means a protective covering of any suitable material placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aids in preventing the evaporation of soil moisture, controlling weeds, and preventing erosion;

(19) Origin means a foreign country or designated portion thereof, a state, the District of Columbia, Puerto Rico, or a possession of the United States, where the seed was grown;

(20) Other crop seed means seed of plants grown as crops, other than the kind or variety included in the pure seed, as established by rules and regulations;

(21) Person includes any corporation, company, society, association, body politic and corporate, community, individual, partnership, limited liability company, or joint-stock company or the public generally;

(22) Primary noxious weed seeds means the seeds of any plant designated by the director as a noxious weed pursuant to the Noxious Weed Control Act. Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this primary noxious weed seeds list;

(23) Prohibited noxious weed seeds means the seeds of plants which are highly destructive and difficult to control in this state by ordinary good cultural practice, the use of herbicides, or both and includes field bindweed (*Convolvulus arvensis*), hoary cress (*Cardaria draba*), Russian knapweed (*Centaurea repens*), johnsongrass (*Sorghum halepense*), Scotch thistle (*Onopordum acanthium*), morning glory (*Ipomoea purpurea*) when found in field crop seeds, skeletonleaf bursage (*Ambrosia discolor*), woollyleaf bursage (*Ambrosia tomentosa*), serrated tussock (*Nassella trichotoma*), and puncturevine (*Tribulus terrestris*). Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this prohibited noxious weed seeds list;

(24) Pure live seed means the product of the percent of germination plus percent of hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result shall be expressed as a whole number;

(25) Pure seed means seed exclusive of inert matter and all other seeds not of the seed being considered as established by rules and regulations;

(26) Record means any and all information which relates to the origin, treatment, germination, purity, kind, and variety of each lot or definite amount of seed handled in this state. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations;

(27) Restricted noxious weed seeds means the seeds of plants which are objectionable in fields, lawns, and gardens of this state but can be controlled by ordinary good cultural practice, the use of herbicides, or both and includes dodder (*Cuscuta* spp.), wild mustard (*Brassica* spp.), dock (*Rumex* spp.), quackgrass (*Elytrigia repens*), pennycress (*Thlaspi arvense*), purple looserife (*Lythrum salicaria*), and horsenettle (*Solanum carolinense*). Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this restricted noxious weed seeds list;

(28) Sale in any of its variant forms means sale, to barter, exchange, offer for sale, expose for sale, move, or transport, in any of their variant forms, or otherwise supplying. Sale does not mean the donation, exchange, or other transfer of seeds to or from a seed library or among members of, or participants in, a seed library;

(29) Screenings means the results of the process which removes, in any way, weed seed, inert matter, and other materials from any agricultural, vegetable, or flower seed in any kind of cleaning process;

(30) Seed library means a nonprofit, governmental, or cooperative organization, association, or activity for the purpose of facilitating the donation, exchange, preservation, and dissemination of seeds of open pollinated, public

domain plant varieties by or among its members or members of the public when the use, exchange, transfer, or possession of seeds acquired by or from the seed library is free of any charge or consideration;

(31) Seizure means a legal process carried out by court order against a definite amount or lot of seed;

(32) Stop-sale order means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount or lot of seed;

(33) Tetrazolium (TZ) test means a type of test in which chemicals are used to produce differential staining of strong, weak, and dead tissues, which is indicative of the potential viability of seeds;

(34) Treated means that the seed has been given an application of a substance or subjected to a process or coating for which a claim is made or which is designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom;

(35) Variety means a subdivision of a kind which is distinct, uniform, and stable. For purposes of this subdivision: (a) Distinct means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; (b) uniform means that variations in essential and distinctive characteristics are describable; and (c) stable means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties;

(36) Vegetable seed includes the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state; and

(37) Weed seed includes the seeds of any plant generally recognized as a weed within this state as established in rules and regulations and includes the primary noxious weed seeds, prohibited noxious weed seeds, and restricted noxious weed seeds.

**Source:** Laws 1969, c. 759, § 2, p. 2860; Laws 1980, LB 633, § 3; Laws 1985, LB 460, § 12; Laws 1990, LB 37, § 1; Laws 1992, LB 366, § 25; Laws 1993, LB 121, § 524; Laws 1997, LB 263, § 2; Laws 2012, LB770, § 1; Laws 2015, LB175, § 9.

#### Cross References

Noxious Weed Control Act, see section 2-945.01.

### **81-2,147.05 Exempt seed or grain.**

(1) Sections 81-2,147.02 and 81-2,147.03 shall not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage in, or being transported or consigned to, a cleaning or conditioning establishment for cleaning or conditioning, except that the invoice or labeling accompanying any shipment of such seed shall bear the statement Seed for Conditioning, and any labeling or other representation which may be made with respect to the uncleaned unconditioned seed shall be subject to the Nebraska Seed Law;

(c) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if such carrier

is not engaged in producing, conditioning, or marketing agricultural, vegetable, or flower seeds subject to the Nebraska Seed Law; or

(d) To seed libraries.

(2) No person shall be subject to the penalties of the Nebraska Seed Law for having sold agricultural, vegetable, or flower seed which was incorrectly labeled or represented as to kind, variety, or origin, if required, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to insure the identity to be as stated.

**Source:** Laws 1969, c. 759, § 6, p. 2871; Laws 1985, LB 460, § 17; Laws 1990, LB 37, § 5; Laws 2015, LB175, § 10.

**81-2,147.10 Sale of labeled seeds; permit required; fees; delinquency fee; renewal; exceptions; refusal or cancellation of permit; hearing.**

(1) No person who labels for sale in Nebraska agricultural, vegetable, or flower seeds shall sell such seeds in Nebraska unless he or she holds a valid seed permit. Application for the permit shall be made to the Department of Agriculture on forms prescribed and furnished by the department. Application forms shall be submitted to the department accompanied by an annual registration fee based on the number of pounds of agricultural, vegetable, or flower seed the applicant labeled and sold during the preceding calendar year. Registrations shall be renewed on or before January 1 of each year. If a person fails to renew the registration by January 31 of each year, such person shall also be required to pay a delinquency fee of twenty percent per month of the amount of the fee due, not to exceed one hundred percent of the annual registration fee. The purpose of the additional delinquency fee is to cover the administrative costs associated with collecting fees. All money collected as a delinquency fee shall be remitted to the State Treasurer for credit to the Nebraska Seed Administrative Cash Fund.

The annual registration fee shall be:

Fee:	Applicant sold:
Twenty-five dollars	Less than ten thousand pounds of agricultural seed (other than lawn and turf seed);
Fifty dollars	Ten thousand or more pounds of agricultural seed (other than lawn and turf seed) and less than two hundred fifty thousand pounds of any kind of seed;
One hundred dollars	Two hundred fifty thousand or more pounds and less than five hundred thousand pounds of seeds;
Two hundred fifty dollars	Five hundred thousand or more pounds and less than one million pounds of seeds;
Three hundred fifty dollars	One million or more pounds and less than five million pounds of seeds;
Seven hundred fifty dollars	Five million or more pounds of seeds.

(2) Subsection (1) of this section shall not apply if the agricultural, vegetable, or flower seeds being labeled and sold are of the breeder or foundation seed

classes of varieties developed by publicly financed research agencies intended for the purpose of increasing the quantity of seed available.

(3) The director shall refuse to issue a permit when the application for such permit is not in compliance with the Nebraska Seed Law or any rules and regulations adopted and promulgated pursuant to such law and may cancel any permit when it is subsequently found to be in violation of any provision of such law, rule, or regulation or when the director has satisfactory evidence that the person has used fraudulent or deceptive practices in an attempted evasion of the law, rule, or regulation, except that no permit shall be refused or canceled until the person shall have been given an opportunity to be heard before the director.

**Source:** Laws 1985, LB 460, § 13; Laws 1990, LB 37, § 10; Laws 1997, LB 263, § 6; Laws 1997, LB 752, § 217; Laws 2016, LB909, § 12.

### **81-2,155 Hybrid seed corn; practices forbidden.**

It shall be unlawful for any person, firm, corporation or its agents or representatives to sell, offer or expose for sale, or falsely mark or tag, within the State of Nebraska, any seed corn as hybrid unless it is seed of the first generation of a cross involving two, three, or four different inbred lines of corn or their combinations.

**Source:** Laws 1937, c. 4, § 1, p. 56; C.S.Supp.,1941, § 81-1823; R.S.1943, § 81-2,155; Laws 2017, LB276, § 1.

### **81-2,156 Hybrid seed corn; cross, defined.**

The cross mentioned in section 81-2,155 shall be produced by cross fertilization performed by a method of proper isolation in time or distance and controlled either by hand, by detasseling at the proper times, or by utilizing male sterility systems.

**Source:** Laws 1937, c. 4, § 2, p. 56; C.S.Supp.,1941, § 81-1824; R.S.1943, § 81-2,156; Laws 2017, LB276, § 2.

### **81-2,157 Hybrid seed corn; violations; penalty; enforcement action; Director of Agriculture; duties.**

(1) Any person who violates any of the provisions of sections 81-2,155 and 81-2,156 shall be guilty of a Class III misdemeanor.

(2) In addition to the criminal penalty provided under subsection (1) of this section, a restraining order or a temporary, permanent, or mandatory injunction may be imposed against any person to restrain the commission or continuance of any act in violation of any of the provisions of sections 81-2,155 and 81-2,156. The district court of the county where such act is occurring or about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(3) Whenever the Director of Agriculture has a reasonable belief that the commission or continuance of any act is in violation of sections 81-2,155 and 81-2,156, the director shall report such belief to the Attorney General or the county attorney of the county in which such act is occurring or about to occur. Upon satisfactory information provided by the director, the Attorney General or

the appropriate county attorney may cause appropriate proceedings pursuant to this section to be initiated without delay.

**Source:** Laws 1937, c. 4, § 3, p. 56; C.S.Supp.,1941, § 81-1825; R.S.1943, § 81-2,157; Laws 1977, LB 39, § 282; Laws 2017, LB276, § 3.

(n) COMMERCIAL FERTILIZER AND SOIL CONDITIONER

**81-2,162.02 Terms, defined.**

For purposes of the Nebraska Commercial Fertilizer and Soil Conditioner Act, unless the context otherwise requires:

(1) Director means the Director of Agriculture or his or her duly authorized agent;

(2) Department means the Department of Agriculture;

(3) Commercial fertilizer means any formula or product distributed for further distribution or ultimate use as a plant nutrient, intended to promote plant growth, containing one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication. The term commercial fertilizer shall not be deemed to include unmanipulated animal and vegetable manures but shall be deemed to include both finished products and fertilizer ingredients capable of being used in the formulation of a finished product;

(4) Bulk means nonpackaged;

(5) Custom-blended product means any individually compounded commercial fertilizer or soil conditioner mixed, blended, offered for sale, or sold in Nebraska to a person's specifications, when such person is the ultimate consumer, if the ingredients used in such product which are subject to the registration requirements of section 81-2,162.03 have been so registered;

(6) Distribute means to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil conditioners;

(7) Fineness means the percentage of weight of the material which will pass United States standard sieves of specified sizes;

(8) Grade means the percentage of total nitrogen, available phosphate, and soluble potash;

(9) Label means a display of written, printed, or other graphic matter upon the container in which a commercial fertilizer or soil conditioner is distributed, or a statement accompanying such product;

(10) Labeling means the label and all other written, printed, or graphic matter accompanying the commercial fertilizer or soil conditioner at any time or to which reference is made on the label;

(11) Official sample means any sample of commercial fertilizer or soil conditioner taken by the director or his or her agent;

(12) Product means both commercial fertilizers and soil conditioners;

(13) Ton means a net weight of two thousand pounds avoirdupois;

(14) Percent or percentage means the percentage by weight;

(15) Person includes individual, cooperative, partnership, limited liability company, association, firm, and corporation;

(16) Sell or sale includes exchange;

(17) Soil conditioner means any formula or product distributed, except unmanipulated animal and vegetable manures, which, when added to the soil, is intended to (a) change the physical condition of the soil or (b) produce a favorable growth, yield, or quality of crops or other soil characteristics but shall not mean a commercial fertilizer, a pesticide as defined in the Pesticide Act, or an agricultural liming material as defined in the Agricultural Liming Materials Act; and

(18) Specialty product means a product for nonfarm use.

**Source:** Laws 1955, c. 334, § 2, p. 1037; Laws 1959, c. 429, § 1, p. 1434; Laws 1975, LB 333, § 2; Laws 1977, LB 91, § 2; Laws 1978, LB 692, § 1; Laws 1980, LB 889, § 1; Laws 1992, LB 366, § 26; Laws 1993, LB 121, § 525; Laws 2015, LB93, § 1.

#### Cross References

**Agricultural Liming Materials Act**, see section 2-4301.

**Pesticide Act**, see section 2-2622.

### **81-2,162.04 Soil conditioner; label; contents; bulk; statement; common name; pesticide; how labeled.**

(1) Any packaged soil conditioner distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously (a) the net weight or measure of the product, (b) the information required by subdivisions (1)(c) and (d) of section 81-2,162.03, (c) the total percentage of all active ingredients in the soil conditioner, (d) the identification and percentage of each individual active ingredient, (e) the total percentage of the inactive ingredients, (f) the identification and percentage of each individual inactive ingredient which comprises more than two percent of the entire soil conditioner, and (g) under a category entitled other inactive ingredients, the total percentage of the remaining inactive ingredients which individually do not comprise two percent or more of the soil conditioner.

(2) If any soil conditioner is distributed in bulk, a written or printed statement of the weight and the information required by subdivisions (1)(c) and (d) of section 81-2,162.03 and by subdivisions (1)(c) through (g) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a soil conditioner is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Notwithstanding any other provision of the Nebraska Commercial Fertilizer and Soil Conditioner Act, any soil conditioner which is also a pesticide, labeled in conformance with the Pesticide Act, shall be deemed to be labeled in conformance with the Nebraska Commercial Fertilizer and Soil Conditioner Act.

**Source:** Laws 1978, LB 692, § 3; Laws 1987, LB 24, § 1; Laws 1987, LB 201, § 4; Laws 1993, LB 588, § 37; Laws 2015, LB93, § 2.

#### Cross References

**Pesticide Act**, see section 2-2622.

### **81-2,162.05 Commercial fertilizer; label affixed to package; contents; common name; custom-blended products; requirements.**

(1) Any packaged commercial fertilizer distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously:

- (a) The net weight or measure of the product;
- (b) The name and principal address of the manufacturer or distributor;
- (c) The name of the product, including any term, design, trademark, or chemical designation used in connection with the product;
- (d) The guaranteed analysis showing the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen . . . . .	percent
Ammoniacal Nitrogen	
(Specialty products only) . . . . .	percent
Nitrate Nitrogen	
(Specialty products only) . . . . .	percent
Water Insoluble Nitrogen	
(Specialty products only) . . . . .	percent
Available Phosphate (P2O5) . . . . .	percent
Soluble Potash (K2O) . . . . .	percent

Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total available phosphate and the degree of fineness. Plant nutrients, other than nitrogen, phosphorus, and potassium, shall be guaranteed when present in significant quantities as determined by the director, which guarantees shall be expressed in elemental form. The director may also request that the sources of such nutrients be included on the label. Other beneficial substances, determinable by chemical methods, may be guaranteed only by permission of the director by and with the advice of the University of Nebraska Institute of Agriculture and Natural Resources;

- (e) The sources from which the nitrogen, available phosphate (P2O5), and potash (K2O) are derived; and
- (f) The grade stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except as follows:
  - (i) Specialty products may be guaranteed in fractional units of less than one percent of the total nitrogen, available phosphate, and soluble potash; and
  - (ii) The director may allow types of fertilizer materials, bone meal, or manures to be guaranteed in fractional units.

(2) If distributed in bulk, a written or printed statement of the information required by subdivisions (a), (b), (c), and (d) of subsection (1) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a commercial fertilizer is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Custom-blended products shall bear a tag or invoice stating the name and principal address of the manufacturer, the name and address of the purchaser, and the net weight or measure and the composition of the product by weight or percentage of ingredients used. A duplicate copy of such information shall be



kept by the manufacturer for use by the department for sampling and inspection purposes.

**Source:** Laws 1955, c. 334, § 5, p. 1040; Laws 1975, LB 333, § 5; Laws 1978, LB 692, § 2; Laws 1980, LB 889, § 3; Laws 1992, LB 366, § 28; Laws 2015, LB93, § 3.

**81-2,162.06 Commercial fertilizer and soil conditioner; inspection fee; amount; tonnage report; additional administrative fee; confidential information.**

(1) There shall be paid to the director, for all commercial fertilizers and soil conditioners distributed in this state to the ultimate user, except custom-blended products, an inspection fee at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be paid by the person distributing the product to the ultimate user.

(2) Payment of the inspection fee shall be evidenced by a statement made with documents showing that fees corresponding to the tonnage were received by the director.

(3) Every person who distributes commercial fertilizer or soil conditioners to the ultimate user in this state shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department setting forth the number of net tons of commercial fertilizer and soil conditioners distributed in this state during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Nebraska Commercial Fertilizer and Soil Conditioner Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to subsection (1) of this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product.

(4) If a person fails to report and pay the fee required by subsection (3) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations, licenses, or both on file for such person.

(5) No information furnished to the department under this section shall be disclosed in such a way as to reveal the operation of any person.

**Source:** Laws 1955, c. 334, § 6, p. 1041; Laws 1965, c. 8, § 47, p. 117; Laws 1969, c. 791, § 2, p. 2996; Laws 1975, LB 333, § 6; Laws 1977, LB 91, § 3; Laws 1980, LB 889, § 4; Laws 1989, LB 38, § 7; Laws 1992, LB 366, § 29; Laws 2015, LB93, § 4.

**81-2,162.07 Enforcement of act; inspections; testing; methods of analysis; results; distribution.**

(1) To enforce the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial fertilizers and soil conditioners are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of commercial fertilizers and soil conditioners, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial fertilizers and soil conditioners. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial fertilizers and soil conditioners are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The director, in determining for administrative purposes whether any product is deficient in plant nutrients, shall be guided solely by the official sample as defined in subdivision (11) of section 81-2,162.02 and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of any official sample shall be forwarded by the director to the person named on the label when the official sample is not in compliance with the act or the rules and regulations adopted pursuant to the act. Upon request made within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the official sample. Following expiration of the ninety-day period, the director may dispose of such sample.

**Source:** Laws 1955, c. 334, § 7, p. 1041; Laws 1969, c. 791, § 3, p. 2997; Laws 1975, LB 333, § 8; Laws 1980, LB 889, § 5; Laws 1992, LB 366, § 30; Laws 1993, LB 267, § 27; Laws 2015, LB93, § 5.

**81-2,162.08 Commercial fertilizer; superphosphate; requirements.**

No superphosphate containing less than eighteen percent available phosphate nor any commercial fertilizer in which the sum of the guarantees for the nitrogen, available phosphate, and soluble potash totals less than twenty percent shall be distributed in this state except for fertilizers containing twenty-five percent or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphate, and soluble potash shall not total less than eighteen percent. This section shall not apply to specialty fertilizers.

**Source:** Laws 1955, c. 334, § 8, p. 1042; Laws 1975, LB 333, § 9; Laws 2015, LB93, § 6.

**81-2,162.11 Commercial fertilizer and soil conditioner; sales information; director make available; contents.**

The director shall annually make available, in such form as he or she may deem proper, information concerning the sales of commercial fertilizers and soil conditioners and a report of the results of the analysis based on official samples of commercial fertilizers and soil conditioners distributed within the state as compared with the analyses guaranteed under the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act.

**Source:** Laws 1955, c. 334, § 11, p. 1043; Laws 1975, LB 333, § 12; Laws, 1992, LB 366, § 31; Laws 2015, LB93, § 7.

**81-2,162.23 Manufacture or distribution of commercial fertilizers or soil conditioners; license required; exception; application; fee; posting of license; records; contents.**

(1) No person shall manufacture or distribute commercial fertilizers or soil conditioners 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 fertilizer or soil conditioners in the State of Nebraska.

(2) An applicant for a license shall make application to the department on forms furnished by the department. Application forms shall be submitted to the department 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) Persons distributing custom-blended products shall maintain records of purchase orders received for custom-blended products from the date such orders are received until such products are distributed, which records shall be sufficient to show the product ordered, date of such order, purchaser, and quantity of product ordered.

(5) The provisions of this section shall not apply to any retail store which sells or offers for sale less than a five-ton volume of commercial fertilizer or soil conditioners annually.

**Source:** Laws 1975, LB 333, § 3; Laws 1977, LB 91, § 4; Laws 1980, LB 889, § 7; Laws 1983, LB 617, § 26; Laws 1992, LB 366, § 40; Laws 1997, LB 752, § 218; Laws 2015, LB93, § 8.

**81-2,162.27 Fertilizers and Soil Conditioners Administrative Fund; created; use; transfers; investment.**

(1) All money received under the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund, which fund is hereby created. All money so received shall be used by the department for defraying the expenses of administering the Nebraska Commercial Fertilizer and Soil Conditioner Act and the Agricultural Liming Materials Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer two hundred seventy-five thousand dollars from the Fertilizers and Soil Conditioners Administrative Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(2) Any unexpended balance in the Fertilizers and Soil Conditioners Administrative Fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding 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 1975, LB 333, § 22; Laws 1986, LB 258, § 32; Laws 1995, LB 7, § 99; Laws 2001, LB 329, § 14; Laws 2003, LB 157, § 4; Laws 2015, LB93, § 9; Laws 2018, LB945, § 18.  
Effective date April 5, 2018.

**Cross References**

**Agricultural Liming Materials Act**, see section 2-4301.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

(o) **PUBLICITY**

**81-2,163 State agricultural resources, industries, and development; department; publications; powers.**

(1) The Department of Agriculture may provide information in reference to the state's agricultural resources, industries, and development and may assemble data relating to such resources, industries, and development. The department may publish the facts ascertained and may charge for departmental publications an amount not to exceed the cost of collecting, publishing, and distributing such information for the purposes of sections 81-201, 81-2,163, and 81-2,164.03.

(2) The Department of Agriculture may cooperate with the federal government, farm industry groups or associations, and any other person in assembling and disseminating information relating to agricultural products produced throughout the state.

**Source:** Laws 1919, c. 190, tit. III, art. XXI, § 1, p. 545; C.S.1922, § 7640; C.S.1929, § 81-2501; R.S.1943, § 81-2,163; Laws 1986, LB 795, § 1; Laws 2018, LB135, § 1.  
Effective date July 19, 2018.

**81-2,164 Repealed. Laws 2018, LB135, § 4.**

**81-2,164.01 Repealed. Laws 2018, LB135, § 4.**

**81-2,164.02 Repealed. Laws 2018, LB135, § 4.**

**81-2,164.03 Agricultural Products Marketing Information Cash Fund; created; use; investment.**

The Director of Agriculture is hereby authorized to receive voluntary gifts and contributions from the federal government, private agencies, farm industry associations, individuals, and any other person, or to collect fees or charges for services or publications from any source, including, but not limited to, the federal government, state governments, public agencies, and private entities or individuals for the purpose of defraying the expenses of carrying out subdivision (3) of section 81-201 and sections 81-2,163 and 81-2,164.03. All advances so received shall be credited to the Agricultural Products Marketing Information Cash Fund, which fund is hereby created. Disbursements from such fund shall be made upon vouchers approved by the director and warrants issued thereon as provided by law. All money received from the federal government, local government agencies, private research agencies, farm industry associations, individuals, or any other person, which are reimbursements for expenditures made, shall be remitted to the State Treasurer for credit to the Agricultural Products Marketing Information Cash 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 1953, c. 337, § 3, p. 1110; Laws 1955, c. 335, § 1, p. 1047; Laws 1965, c. 8, § 48, p. 117; Laws 1974, LB 888, § 2; Laws 1986, LB 795, § 3; Laws 1995, LB 7, § 100; Laws 2018, LB135, § 2.

Effective date July 19, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### (v) ORGANIC FOOD

**81-2,233 Repealed. Laws 2016, LB921, § 1.**

**81-2,234 Repealed. Laws 2016, LB921, § 1.**

**81-2,235 Repealed. Laws 2016, LB921, § 1.**

#### (x) NEBRASKA PURE FOOD ACT

**81-2,239 Nebraska Pure Food Act; provisions included; how cited.**

Sections 81-2,239 to 81-2,292 and the provisions of the Food Code and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 and 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

**Source:** Laws 1981, LB 487, § 5; Laws 1989, LB 548, § 3; R.S.Supp.,1990, § 81-216.01; Laws 1991, LB 358, § 8; Laws 1992, LB 366, § 55; Laws 1997, LB 199, § 3; Laws 1999, LB 474, § 1; Laws 2003, LB 250, § 3; Laws 2004, LB 1045, § 1; Laws 2005, LB 131, § 1; Laws 2007, LB74, § 1; Laws 2012, LB771, § 1; Laws 2016, LB798, § 1; Laws 2017, LB134, § 1.

**81-2,240 Definitions, where found.**

For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-2,241 to 81-2,254 shall be used. In addition, the definitions found in the code and practice adopted by reference in sections 81-2,257.01 and 81-2,259 shall be used.

**Source:** Laws 1981, LB 487, § 6; Laws 1989, LB 548, § 4; R.S.Supp.,1990, § 81-216.02; Laws 1991, LB 358, § 9; Laws 1992, LB 366, § 56; Laws 1997, LB 199, § 4; Laws 1999, LB 474, § 2; Laws 2004, LB 1045, § 2; Laws 2005, LB 131, § 2; Laws 2016, LB798, § 2; Laws 2017, LB134, § 2.

**81-2,243.01 Egg handler, defined.**

Egg handler shall mean any person who engages in any business in commerce which involves buying or selling any shell eggs or processing any shell egg products and who is not a producer with production from a flock of three thousand hens or less. Egg handler shall include persons who assemble, collect, break, process, grade, package, or wholesale shell eggs. The term does not include a person whose primary food-related business activity is not egg handling.

**Source:** Laws 2017, LB134, § 3.

**81-2,244.01 Food Code, defined.**

Food Code shall mean the 2013 Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment, person in charge, regulatory authority, and sections 2-102.12, 2-102.20(B), 2-103.11(L), 2-501.11, 3-301.11(B), (C), (D), and (E), 3-501.16, 4-301.12(C)(5), (D), and (E), 4-603.16(C), 4-802.11(C), 5-104.11, 6-301.14, 8-101, 8-102, 8-201.11, 8-201.12, 8-202 through 8-304, 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term Food Code does not include the annexes of such federal recommendations.

**Source:** Laws 1997, LB 199, § 8; Laws 1999, LB 474, § 3; Laws 2003, LB 250, § 4; Laws 2007, LB74, § 2; Laws 2012, LB771, § 2; Laws 2016, LB798, § 3.

**81-2,245 Food delivery service, defined.**

Food delivery service shall mean an operation that only meets the definition of food establishment by relinquishing possession of food to a consumer through a delivery service including home delivery of grocery orders, restaurant takeout orders, or other delivery services provided by a common or contract carrier.

**Source:** Laws 2017, LB134, § 4.

**81-2,245.01 Food establishment, defined.**

Food establishment shall mean an operation that stores, prepares, packages, serves, sells, vends, delivers, or otherwise provides food for human consumption. The term does not include:

(1) An establishment or vending machine operation that offers only prepackaged soft drinks, carbonated or noncarbonated; canned or bottled fruit and

vegetable juices; prepackaged ice; candy; chewing gum; potato or corn chips; pretzels; cheese puffs and curls; crackers; popped popcorn; nuts and edible seeds; and cookies, cakes, pies, and other pastries, that are not time/temperature control for safety foods;

(2) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(3) A food processing plant;

(4) A salvage operation;

(5) A private home where food is prepared or served for personal use, a small day care in the home, or a hunting lodge, guest ranch, or other operation where no more than ten paying guests eat meals in the home;

(6) A private home or other area where food that is not time/temperature control for safety food is prepared: (a) For sale or service at a religious, charitable, or fraternal organization's bake sale or similar function; or (b) for sale directly to the consumer at a farmers market if the consumer is informed by a clearly visible placard at the sale location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

(7) A private home or other area where food is prepared for distribution at a fundraising event for a charitable purpose if the consumer is informed by a clearly visible placard at the serving location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority. This subdivision does not apply to a caterer or other establishment providing food for the event if the caterer or establishment receives compensation for providing the food;

(8) The location where food prepared by a caterer is served so long as the caterer only minimally handles the food at the serving location;

(9) Educational institutions, health care facilities, nursing homes, and governmental organizations which are inspected by a state agency or a political subdivision other than the regulatory authority for sanitation in the food preparation areas;

(10) A pharmacy as defined in section 71-425 if the pharmacy only sells prepackaged pharmaceutical, medicinal, or health supplement foods that are not time/temperature control for safety or foods described in subdivision (1) of this section; and

(11) An establishment which is not a commercial food establishment and which sells only commercially packaged foods that are not time/temperature control for safety foods.

**Source:** Laws 1997, LB 199, § 9; Laws 1999, LB 474, § 4; Laws 2003, LB 250, § 5; Laws 2005, LB 131, § 4; Laws 2016, LB798, § 4.

**81-2,246.01 Repealed. Laws 2016, LB798, § 14.**

**81-2,247 Repealed. Laws 2016, LB798, § 14.**

**81-2,248 Itinerant food vendor, defined.**

Itinerant food vendor shall mean a person that sells prepackaged, time/temperature control for safety food from an approved source at a nonpermanent location such as a farmers market, craft show, or county fair.

**Source:** Laws 2007, LB74, § 3; Laws 2016, LB798, § 5.

**81-2,251.01 Limited food vending machine, defined.**

Limited food vending machine shall mean a vending machine which does not dispense time/temperature control for safety food.

**Source:** Laws 1999, LB 474, § 5; Laws 2016, LB798, § 6.

**81-2,251.06 Pushcart, defined.**

Pushcart shall mean a non-self-propelled vehicle limited to serving food which is not time/temperature control for safety or commissary wrapped food maintained at temperatures in compliance with the Nebraska Pure Food Act or limited to the preparation and serving of frankfurters.

**Source:** Laws 1999, LB 474, § 6; Laws 2016, LB798, § 7.

**81-2,254.01 Repealed. Laws 2016, LB798, § 14.****81-2,257 Priority items; priority foundation items; designation.**

Priority items are designated in the Food Code and sections 81-2,272.10 and 81-2,272.24. Priority foundation items are designated in the Food Code.

**Source:** Laws 1999, LB 474, § 19; Laws 2003, LB 250, § 6; Laws 2007, LB74, § 4; Laws 2012, LB771, § 3; Laws 2016, LB798, § 8.

**81-2,258 Repealed. Laws 2016, LB798, § 14.****81-2,259 Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food; adoption.**

The Legislature hereby adopts by reference the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food found in 21 C.F.R. part 110 as it existed on April 1, 2015.

**Source:** Laws 1999, LB 474, § 7; Laws 2012, LB771, § 4; Laws 2016, LB798, § 9.

**81-2,262 Code and practice; where filed.**

Copies of the code and practice adopted by reference pursuant to sections 81-2,257.01 and 81-2,259 shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

**Source:** Laws 1981, LB 487, § 24; R.S.1943, (1987), § 81-216.20; Laws 1991, LB 358, § 31; Laws 1997, LB 199, § 19; Laws 1999, LB 474, § 9; Laws 2017, LB134, § 5.

**81-2,263 Inconsistencies; sections control.**

If there is an inconsistency between sections 81-2,239 to 81-2,292 and any code adopted by reference, the requirements of the sections shall control.

**Source:** Laws 1991, LB 358, § 32; Laws 1997, LB 199, § 20; Laws 2003, LB 250, § 7; Laws 2017, LB134, § 6.

**81-2,270 Food establishment, food processing plant, or salvage operation; permits; application; contents; fees; late fee; exemptions.**



(1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit or notifying the regulatory authority, the applicant shall pay an additional fee of sixty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (7) through (10) of this section and subsection (2) of section 81-2,281, a permitholder shall pay annual inspection fees on or before August 1 of each year regardless of when the initial permit was obtained.

(4)(a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (4)(b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between all categories.

(b) The maximum fees are:

	Initial Permit Fee	First Food Preparation Area Annual Inspection Fee	Additional Food Preparation Area Annual Inspection Fee (per area)	No Food Preparation Area, Unit Or Units Annual Inspection Fee
Food Handling Activity Convenience Store	\$86.19	\$86.19	\$43.09	N/A

	Initial Permit Fee	First Food Preparation Area Annual Inspection Fee	Additional Food Preparation Area Annual Inspection Fee (per area)	No Food Preparation Area, Unit Or Units Annual Inspection Fee
Food Handling Activity				
Itinerant Food Vendor Licensed Beverage Establishment	\$86.19	\$86.19	\$43.09	N/A
Limited Food Service Establishment	\$86.19	\$86.19	\$43.09	N/A
Temporary Food Establishment	\$86.19	\$86.19	\$43.09	N/A
Food Delivery Service	\$86.19	N/A	N/A	\$17.23
Mobile Food Unit (for each unit)	\$86.19	N/A	N/A	\$43.09
Pushcart (for each unit)	\$86.19	N/A	N/A	\$17.23
Vending Machine Operations:	\$86.19			
One to ten units		N/A	N/A	\$17.23
Eleven to twenty units		N/A	N/A	\$34.46
Twenty-one to thirty units		N/A	N/A	\$51.69
Thirty-one to forty units		N/A	N/A	\$68.92
Over forty units		N/A	N/A	\$86.15
Food Processing Plant	\$86.19	\$120.64	\$43.09	N/A
Salvage Operation	\$86.19	\$120.64	\$43.09	N/A
Commissary	\$86.19	\$120.64	\$43.09	N/A
All Other Food Establishments	\$86.19	\$120.64	\$43.09	N/A

(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) If a person fails to pay the inspection fee for more than one month after the fee is due, such person shall pay a late fee equal to fifty percent of the total fee for the first month that the fee is late and one hundred percent for the second month that the fee is late. The purpose of the late fee is to cover the administrative costs associated with collecting fees. All money collected as a late fee shall be remitted to the State Treasurer for credit to the Pure Food Cash Fund.

(7) An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (6) of this section.

(8) A food establishment which produces eggs and only stores, packages, sells, delivers, or otherwise provides for human consumption the eggs it

produces, or only stores, packages, sells, delivers, or otherwise provides for human consumption eggs produced from no more than four producers at the same time, is exempt from the requirements of subsections (1) through (6) of this section. Any food establishment with a valid egg handler license and for which all fees have been paid prior to August 24, 2017, is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act until August 1, 2018.

(9) A food establishment or food processing plant holding a permit under the Nebraska Milk Act is exempt from the requirements of subsections (1) through (6) of this section.

(10) A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

**Source:** Laws 1981, LB 487, § 25; Laws 1982, LB 547, § 15; Laws 1985, LB 460, § 9; R.S.1943, (1987), § 81-216.21; Laws 1991, LB 358, § 39; Laws 1993, LB 121, § 526; Laws 1997, LB 199, § 23; Laws 1999, LB 474, § 10; Laws 2003, LB 250, § 8; Laws 2004, LB 1045, § 5; Laws 2007, LB74, § 5; Laws 2007, LB111, § 29; Laws 2012, LB771, § 5; Laws 2017, LB134, § 7.

#### Cross References

Nebraska Milk Act, see section 2-3965.

### 81-2,270.01 Eggs.

Any person who for remuneration packs and sells, offers for sale, barter, or otherwise provides eggs for human consumption shall comply with all applicable requirements set forth in rules and regulations adopted and promulgated by the department and shall establish the source of the eggs by labeling the eggs with a packer identification number assigned by the department or the United States Department of Agriculture.

**Source:** Laws 2017, LB134, § 8.

**81-2,271 Food establishment, food processing plant, or salvage operation; permit; posting; food delivery service; location; change of ownership or location; duties; movement authorized; mobile food unit or pushcart; copy of permit.**

(1) The permit required by section 81-2,270 shall be posted in a location in the food establishment, food processing plant, or salvage operation which is conspicuous to the public. A salvage operation shall also have a copy of the permit in each vehicle. For a food delivery service, the location shall be a permanent address where the permitholder may be contacted.

(2) The permit is not transferable to any other person or location. Any permit issued lapses automatically upon a change of ownership or location except as provided in subsection (3) of this section. The permitholder shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. The permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to

receive the notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

(3) A mobile food unit, pushcart, or vending machine may be moved if the permitholder is able to provide the location of such unit, pushcart, or machine to the regulatory authority upon request and the person authorized by the permitholder to receive notices and orders of the department maintains a permanent mailing address on file with the department. A food delivery service shall upon request provide the department with information regarding the location of all conveyances it controls.

(4) Every mobile food unit or pushcart operator shall have a copy of their permit to operate available at the mobile food unit or pushcart when in operation.

**Source:** Laws 1991, LB 358, § 40; Laws 1997, LB 199, § 25; Laws 2012, LB771, § 6; Laws 2017, LB134, § 9.

**81-2,272.01 Time/temperature control for safety food; temperature; equipment.**

(1) Except during preparation, cooking, or cooling or when time is used as the public health control as specified under the Nebraska Pure Food Act and except as specified under subsection (2) of this section, time/temperature control for safety food shall be maintained:

(a) At one hundred thirty-five degrees Fahrenheit (fifty-seven degrees Celsius) or above, except that roasts cooked to a temperature and for a time specified in the Nebraska Pure Food Act or reheated as specified in the act may be held at a temperature of one hundred thirty degrees Fahrenheit (fifty-four degrees Celsius) or above; or

(b) At:

(i) Forty-one degrees Fahrenheit (five degrees Celsius) or less; or

(ii) Forty-five degrees Fahrenheit (seven degrees Celsius) or between forty-one degrees Fahrenheit (five degrees Celsius) and forty-five degrees Fahrenheit (seven degrees Celsius) in existing refrigeration equipment that is not capable of maintaining the food at forty-one degrees Fahrenheit (five degrees Celsius) or less if:

(A) The equipment is in place and in use in the food establishment; and

(B) Refrigeration equipment that is not capable of meeting a cold holding temperature of forty-one degrees Fahrenheit (five degrees Celsius) that is in use on March 8, 2012, shall, upon replacement of the equipment or at a change of ownership of the food establishment, be replaced with equipment that is capable of maintaining foods at forty-one degrees Fahrenheit (five degrees Celsius) or below.

(2) Eggs that have not been treated to destroy all viable *Salmonellae* shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (seven degrees Celsius) or less.

(3) Time/temperature control for safety food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under subsection (1) of this section, while contained within specially

designed equipment that complies with the design and construction requirements as specified in the act.

**Source:** Laws 2012, LB771, § 7; Laws 2016, LB798, § 10.

**81-2,272.24 Time/temperature control for safety food; date marking; sale, consumption, or discard requirements.**

In addition to the provisions of sections 3-501.17 and 3-501.18 of the Food Code which apply to food held at a temperature of forty-one degrees Fahrenheit (five degrees Celsius) or below, food held in refrigeration between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius) shall meet the following requirements:

(1) Except when packaging food using a reduced oxygen packaging method as specified in section 3-502.12 of the Food Code and except as specified in section 3-501.17 of the Food Code, refrigerated, ready-to-eat, time/temperature control for safety food prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date of preparation. The food shall be sold, consumed on the premises, or discarded within four calendar days or less;

(2) Except as specified in section 3-501.17 of the Food Code, refrigerated, ready-to-eat, time/temperature control for safety food prepared and packaged by a food processing plant and held refrigerated at such food establishment, shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date the food container was opened. The food shall be sold, consumed on the premises, or discarded within four calendar days or less; and

(3) A food specified under this section shall be discarded if such food:

(a) Exceeds the temperature and time combinations specified in subdivision (1) of this section, except time that the food is frozen;

(b) Is in a container or package that does not bear a date or day;

(c) Is appropriately marked with a date or day that exceeds the temperature and time combination as specified in subdivision (1) of this section; or

(d) Is prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control if it exceeds the temperature and time combination as specified in subdivision (1) of this section.

**Source:** Laws 1997, LB 199, § 49; Laws 1999, LB 474, § 14; Laws 2003, LB 250, § 15; Laws 2007, LB74, § 8; Laws 2016, LB798, § 11.

**81-2,272.25 Repealed. Laws 2016, LB798, § 14.**

**81-2,272.27 Repealed. Laws 2016, LB798, § 14.**

**81-2,272.31 Water supply; requirements.**

Except in response to a temporary interruption of a water supply in the food establishment, any food establishment which is not a food delivery service, mobile food unit, or temporary food establishment shall:

(1) Have water under pressure provided to all fixtures, equipment, and nonfood equipment that are required to use water;

(2) Receive water through the use of an approved water main;

(3) Have a permanent plumbing system; and

(4) Have at least one toilet which is permanent, convenient, and accessible.

**Source:** Laws 2003, LB 250, § 19; Laws 2017, LB134, § 10.

**81-2,272.34 Repealed. Laws 2016, LB798, § 14.**

**81-2,277 Food processing plants and salvage operations; compliance required.**

Food processing plants and salvage operations shall comply with the federal Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted in section 81-2,259.

**Source:** Laws 1999, LB 474, § 15; Laws 2012, LB771, § 8; Laws 2016, LB798, § 12.

**81-2,281 Department; enforce act; powers; contract for conduct of certain regulatory functions; exemption from inspection fee; inspections; how conducted; by whom.**

(1) The department shall enforce the Nebraska Pure Food Act and any rule or regulation adopted and promulgated pursuant to such act. The department may:

(a) Enter at reasonable times and in a reasonable manner, without being subject to any action for trespass or damages if reasonable care is exercised, any food establishment, food processing plant, or salvage operation to inspect all food, structures, vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the Nebraska Pure Food Act. Such records and property shall be made available to the department for review at all reasonable times;

(b) In a reasonable manner, hold for inspection and take samples of any food which may not be in compliance with the Nebraska Pure Food Act;

(c) Inspect at any time or place food that is being shipped into or through the state and take any enforcement action authorized under the Nebraska Pure Food Act; and

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this subsection.

(2) In addition to its authority provided in subsection (1) of this section, the department may contract with any political subdivision or state agency it deems qualified to conduct any or all regulatory functions authorized pursuant to the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the inspection fees prescribed in section 81-2,270 if such holders pay license or inspection fees to the political subdivision performing the inspections.

(3) It shall be the responsibility of the regulatory authority to inspect food establishments and food processing plants as often as required by the act. An inspection of a salvage operation shall be performed at least once every three hundred sixty-five days of operation. Additional inspections shall be performed as often as is necessary for the efficient and effective enforcement of the act.

(4) All inspections conducted pursuant to the act shall be performed by persons who are provisional environmental health specialists or registered environmental health specialists as defined in section 38-1305 or 38-1306.

(5) Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments, food processing plants, or salvage operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to pay for samples taken. The authorized personnel shall also have access to the records of salvage operations pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

(6) Regulatory activities performed by a political subdivision or state agency under contract shall conform with the provisions of the act and such activities shall have the same effect as those performed by the department. Any interference with the regulatory authority's duty to inspect shall be an interference with the department's duties for the purposes of section 81-2,273.

**Source:** Laws 1981, LB 487, § 31; Laws 1991, LB 703, § 66; R.S.1943, (1987), § 81-216.27; Laws 1991, LB 358, § 50; Laws 1997, LB 199, § 58; Laws 1999, LB 474, § 16; Laws 2007, LB463, § 1311; Laws 2017, LB134, § 11.

**81-2,288 Department; adopt rules and regulations; contracts with federal agencies authorized; exemptions from act.**

(1) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of the Nebraska Pure Food Act.

(2) The department may adopt and promulgate rules and regulations to provide for source labeling on eggs which are packaged. The department may establish standards, grades, and weight classes for eggs.

(3) The department may contract with agencies of the federal government for the performance by the department of inspections and other regulatory functions at food establishments, food processing plants, or salvage operations within the state which are subject to federal jurisdiction and may receive federal funds for work performed under such contracts.

(4) Except as provided in subsection (3) of this section, the provisions of the act shall not apply to establishments or specific portions of establishments regularly inspected for proper sanitation by an agency of the federal government.

**Source:** Laws 1981, LB 487, § 38; R.S.1943, (1987), § 81-216.34; Laws 1991, LB 358, § 57; Laws 1997, LB 199, § 60; Laws 2017, LB134, § 12.

(z) ZONING

**81-2,294 Conditional use permit or special exception application; department; develop assessment matrix; criteria; committee; advise department; use.**

(1) The Director of Agriculture shall appoint a committee of experts, not to exceed ten persons, to advise the Department of Agriculture on the develop-

ment of the assessment matrix described in subsection (2) of this section. Experts shall include representation from county board members, county zoning administrators, livestock production agriculture, the University of Nebraska, and other experts as may be determined by the director. The committee shall review the matrix annually and recommend to the department changes as needed.

(2) The Department of Agriculture shall, in consultation with the committee created under subsection (1) of this section, develop an assessment matrix which may be used by county officials to determine whether to approve or disapprove a conditional use permit or special exception application. The matrix shall be developed within one year after August 30, 2015. In the development of the assessment matrix, the department shall:

(a) Consider matrices already developed by the counties and other states;

(b) Design the matrix to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The matrix shall consider risks and factors mitigating risks if the livestock operation were constructed according to the application;

(c) Assure the matrix is a practical tool for use by persons when completing permit applications and by county officials when scoring conditional use permit or special exception applications. To every extent feasible, the matrix shall include criteria that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree; and

(d) Provide for definite point selections for all criteria included in the matrix and provide for a minimum threshold total score required to receive approval by county officials.

(3) The Department of Agriculture may develop criteria in the matrix which include factors referencing the following:

(a) Size of operation;

(b) Type of operation;

(c) Whether the operation has received or is in the process of applying for a permit from the Department of Environmental Quality, if required by law;

(d) Environmental practices adopted by the operation operator which may exceed those required by the Department of Environmental Quality;

(e) Odor control practices;

(f) Consideration of proximity of a livestock operation to neighboring residences, public use areas, and critical public areas;

(g) Community support and communication with neighbors and other community members;

(h) Manure storage and land application sites and practices;

(i) Traffic;

(j) Economic impact to the community; and

(k) Landscape and aesthetic appearance.

(4) In developing the matrix, the Department of Agriculture shall consider whether the proposed criteria are:

(a) Protective of public health or safety;



- (b) Practical and workable;
- (c) Cost effective;
- (d) Objective;
- (e) Based on available scientific information that has been subjected to peer review;
- (f) Designed to promote the growth and viability of animal agriculture in this state;
- (g) Designed to balance the economic viability of farm operations with protecting natural resources and other community interests; and
- (h) Usable by county officials.

**Source:** Laws 2015, LB106, § 1.

#### ARTICLE 4 DEPARTMENT OF LABOR

Section

81-401. Department of Labor; general powers.

81-402. Repealed. Laws 2017, LB172, § 89.

81-405. Mechanical Safety Inspection Fund; created; use; investment.

81-406. Contractor and Professional Employer Organization Registration Cash Fund; created; use; investment.

#### **81-401 Department of Labor; general powers.**

The Governor, through the agency of the Department of Labor created by section 81-101, shall have power:

- (1) To foster, promote, and develop the welfare of wage earners;
- (2) To improve working conditions;
- (3) To advance opportunities for profitable employment;
- (4) To collect, collate, assort, systematize, and report statistical details relating to all departments of labor, especially in its relation to commercial, industrial, social, economic, and educational conditions and to the permanent prosperity of the manufacturing and productive industries;
- (5) To acquire and distribute useful information on subjects connected with labor in the most general and comprehensive sense of the word;
- (6) To acquire and distribute useful information concerning the means of promoting the material, social, intellectual, and moral prosperity of laboring men and women;
- (7) To acquire and distribute information as to the conditions of employment and such other facts as may be deemed of value to the industrial interests of the state;
- (8) To acquire and distribute information in relation to the prevention of accidents, occupational diseases, and other related subjects;
- (9) To acquire and distribute useful information regarding the role of the part-time labor force and the manner in which such labor force affects the economy and citizens of the state; and
- (10) To administer and enforce all of the provisions of the Boiler Inspection Act, the Employment Security Law, the Farm Labor Contractors Act, the Nebraska Amusement Ride Act, and the Wage and Hour Act and Chapter 48,

articles 2, 3, 4, and 5, and for that purpose there is imposed upon the Commissioner of Labor the duty of executing all of the provisions of such acts, law, and articles.

**Source:** Laws 1919, c. 190, tit. IV, art. I, § 1, p. 545; C.S.1922, § 7654; C.S.1929, § 81-2901; Laws 1935, c. 57, § 37, p. 207; C.S.Supp.,1941, § 81-2901; R.S.1943, § 81-401; Laws 1993, LB 334, § 1; Laws 2001, LB 193, § 13; Laws 2015, LB334, § 1.

**Cross References**

**Boiler Inspection Act**, see section 48-719.

**Employment Security Law**, see section 48-601.

**Farm Labor Contractors Act**, see section 48-1701.

**Nebraska Amusement Ride Act**, see section 48-1801.

**Wage and Hour Act**, see section 48-1209.

**81-402 Repealed. Laws 2017, LB172, § 89.**

**81-405 Mechanical Safety Inspection Fund; created; use; investment.**

The Mechanical Safety Inspection Fund is created. All fees collected by the Department of Labor pursuant to the Nebraska Amusement Ride Act and the Conveyance Safety Act shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund. Fees so collected shall be used for administering the provisions of the Nebraska Amusement Ride Act and the Conveyance Safety Act. Any money in the Mechanical Safety Inspection 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. Money in the Mechanical Safety Inspection Fund may be transferred to the General Fund at the direction of the Legislature.

The State Treasurer shall transfer one hundred fifty thousand dollars from the Mechanical Safety Inspection Fund to the General Fund on or before June 15, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2007, LB265, § 24; Laws 2017, LB331, § 46.

**Cross References**

**Conveyance Safety Act**, see section 48-2501.

**Nebraska Amusement Ride Act**, see section 48-1801.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-406 Contractor and Professional Employer Organization Registration Cash Fund; created; use; investment.**

The Contractor and Professional Employer Organization Registration Cash Fund is created. The fund shall be administered by the Department of Labor and shall consist of fees collected by the department pursuant to the Farm Labor Contractors Act, the Contractor Registration Act, and the Professional Employer Organization Registration Act and such sums as are appropriated to the fund by the Legislature. The fund shall be used for enforcing and administering the Farm Labor Contractors Act, the Contractor Registration Act, the Employee Classification Act, and the Professional Employer Organization Registration 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. Money in the Contractor and

Professional Employer Organization Registration Cash Fund may be transferred to the General Fund at the direction of the Legislature.

The State Treasurer shall transfer one million seven hundred thousand dollars from the Contractor and Professional Employer Organization Registration Cash Fund to the General Fund on or before June 15, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2016, LB270, § 1; Laws 2017, LB331, § 47.

#### Cross References

**Contractor Registration Act**, see section 48-2101.  
**Employee Classification Act**, see section 48-2901.  
**Farm Labor Contractors Act**, see section 48-1701.  
**Nebraska Capital Expansion Act**, see section 72-1269.  
**Nebraska State Funds Investment Act**, see section 72-1260.  
**Professional Employer Organization Registration Act**, see section 48-2701.

## ARTICLE 5

### STATE FIRE MARSHAL

#### (b) GENERAL PROVISIONS

Section	
81-502.	State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel.
81-502.04.	Rules and regulations; enforcement; procedure.
81-503.01.	State Fire Code; State Fire Marshal; duties; contents; enforcement; plans; review; late penalty.
81-513.	Repealed. Laws 2017, LB371, § 3.
81-514.	Repealed. Laws 2017, LB371, § 3.
81-515.	Repealed. Laws 2017, LB371, § 3.
81-516.	Repealed. Laws 2017, LB371, § 3.
81-517.	Repealed. Laws 2017, LB371, § 3.
81-518.	Repealed. Laws 2017, LB371, § 3.
81-519.	Repealed. Laws 2017, LB371, § 3.
81-526.	State Fire Marshal; investigations; duty of county attorney to act.
81-541.01.	Repealed. Laws 2018, LB889, § 5.

#### (b) GENERAL PROVISIONS

#### **81-502 State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel.**

(1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire; and

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed foster care facilities or applicants for licenses for foster care facilities, upon request by the Department of Health and Human Services, pursuant to section 71-1903;

(iii) Upon request of the Department of Health and Human Services, licensed providers of programs or applicants for licenses to provide such programs pursuant to section 71-1913 and licensed residential child-caring agencies or applicants for such licensure pursuant to section 71-1934. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other health care facilities which are licensed under the Health Care Facility Licensure Act or applicants for licenses for such facilities or institutions, upon request by the Department of Health and Human Services, pursuant to section 71-441; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health and Human Services, pursuant to section 71-4635.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to the Arson Reporting Immunity Act, the Nebraska Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to 81-538, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

(3) The State Fire Marshal may delegate the authority set forth in this section and section 81-503.01 to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 and as may be conferred and imposed by law.

**Source:** Laws 1925, c. 183, § 2, p. 479; C.S.1929, § 81-5502; R.S.1943, § 81-502; Laws 1947, c. 313, § 1, p. 949; Laws 1967, c. 446, § 3, p. 1389; Laws 1969, c. 794, § 1, p. 3000; Laws 1972, LB 782, § 1; Laws 1973, LB 180, § 1; Laws 1976, LB 986, § 3; Laws 1981, LB 266, § 2; Laws 1982, LB 792, § 1; Laws 1983, LB 498, § 5; Laws 1984, LB 130, § 15; Laws 1985, LB 253, § 9; Laws 1986, LB 217, § 12; Laws 1987, LB 459, § 6; Laws 1989, LB 215, § 18; Laws 1993, LB 251, § 4; Laws 1993, LB 348, § 79; Laws 1993, LB 377, § 7; Laws 1995, LB 401, § 44; Laws 1996, LB 1044, § 837; Laws 1997, LB 307, § 215; Laws 1999, LB 594, § 70; Laws 2000, LB 819, § 153; Laws 2007, LB296, § 728; Laws 2013, LB265, § 47; Laws 2018, LB889, § 1.  
Effective date July 19, 2018.

#### Cross References

**Arson Reporting Immunity Act**, see section 81-5,115.

**Health Care Facility Licensure Act**, see section 71-401.

**Inspection of businesses credentialed under the Uniform Credentialing Act**, see section 38-139.

**Nebraska Natural Gas Pipeline Safety Act of 1969**, see section 81-552.

**Storage tank registration**, see sections 81-1575 to 81-1577.01.

### 81-502.04 Rules and regulations; enforcement; procedure.

The enforcement of rules and regulations adopted and promulgated by the State Fire Marshal under sections 81-502 and 81-503.01 shall be as follows:

(1) Any order of the State Fire Marshal under the authority granted to him or her by section 81-502 shall be in writing addressed to the owner or person in charge of the premises affected by such order;

(2) If the affected party or organization does not comply with the final order, the State Fire Marshal shall apply to the district court of the county in which the premises are located to obtain court enforcement of the order. The county attorney of the county in which the action is brought shall represent the State Fire Marshal and the action shall be brought in the name of the State of Nebraska and be tried the same as any action in equity; and

(3) If the affected party or organization feels that the order of the State Fire Marshal is not necessary for the safety and welfare of the persons using or to use the premises regarding which the order is made, the party or organization may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1973, LB 180, § 2; Laws 1988, LB 893, § 7; Laws 1988, LB 352, § 167; Laws 2018, LB889, § 2.  
Effective date July 19, 2018.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **81-503.01 State Fire Code; State Fire Marshal; duties; contents; enforcement; plans; review; late penalty.**

(1) The State Fire Marshal shall adopt and promulgate rules and regulations constituting a State Fire Code. At a minimum, the State Fire Code shall cover:

(a) The prevention of fires;

(b) The storage, sale, and use of flammable liquids, combustibles, and fireworks;

(c) Electrical wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within structures necessary to promote safety and reduce loss by fire;

(d) The means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the State Fire Code;

(e) All other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose, whether privately or publicly owned;

(f) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(g) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist;

(h) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(i) Accessibility standards and specifications adopted pursuant to section 81-5,147.

(2) Not later than July 1, 2019, the rules and regulations adopted and promulgated as part of the State Fire Code shall conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 1, known as the Fire Code, 2012 edition, the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, 2012 edition, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property.

(3) The State Fire Marshal shall enforce the State Fire Code through inspections, code compliance, and orders. Plans for compliance with the State Fire Code shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.

(4) Rules and regulations adopted and promulgated as part of the State Fire Code shall apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

**Source:** Laws 2018, LB889, § 3.  
Effective date July 19, 2018.

#### Cross References

**Petroleum Products and Hazardous Substances Storage and Handling Act**, see section 81-15,117.

**81-513 Repealed. Laws 2017, LB371, § 3.**

**81-514 Repealed. Laws 2017, LB371, § 3.**

**81-515 Repealed. Laws 2017, LB371, § 3.**

**81-516 Repealed. Laws 2017, LB371, § 3.**

**81-517 Repealed. Laws 2017, LB371, § 3.**

**81-518 Repealed. Laws 2017, LB371, § 3.**

**81-519 Repealed. Laws 2017, LB371, § 3.**

**81-526 State Fire Marshal; investigations; duty of county attorney to act.**

The county attorney of any county, upon request of the State Fire Marshal, or his or her deputies or assistants, shall (1) assist such officers in the investigation of any fire which, in their opinion, is of suspicious origin and (2) act as attorney for such officers in all court proceedings in connection with the enforcement of the Petroleum Products and Hazardous Substances Storage and Handling Act when, in the exercise of a reasonable discretion, the county attorney shall determine that the evidence is sufficient to justify the bringing of such court proceedings.

**Source:** Laws 1925, c. 183, § 25, p. 489; C.S.1929, § 81-5525; R.S.1943, § 81-526; Laws 1945, c. 228, § 1, p. 675; Laws 1986, LB 217, § 13; Laws 2017, LB371, § 1.

#### Cross References

**Petroleum Products and Hazardous Substances Storage and Handling Act**, see section 81-15,117.

**81-541.01 Repealed. Laws 2018, LB889, § 5.****ARTICLE 6****HEALTH AND HUMAN SERVICES****(h) RESEARCH GRANTS**

## Section

81-638. Cancer and smoking disease research; appropriation; distribution; contracts; requirements.

**(q) PERSONS WITH DISABILITIES**

81-6,121. Persons with disabilities; legislative findings and declarations.

81-6,122. Strategic plan for providing services; department; duties; advisory committee; report; contents.

**(h) RESEARCH GRANTS****81-638 Cancer and smoking disease research; appropriation; distribution; contracts; requirements.**

(1) Subject to subsection (4) of this section, the Legislature shall appropriate for each year from the Health and Human Services Cash Fund to the department an amount derived from one cent of the cigarette tax imposed by section 77-2602, less any amount appropriated from the fund specifically to the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The department shall, after deducting expenses incurred in the administration of such funds, distribute such funds exclusively for grants and contracts for research of cancer and smoking diseases, for funding the cancer registry prescribed in sections 81-642 to 81-650, and for associated expenses due to the establishment and maintenance of such cancer registry. Not more than two hundred thousand dollars shall be appropriated for funding the cancer registry and associated expenses. The University of Nebraska may receive such grants and contracts, and other postsecondary institutions having colleges of medicine located in the State of Nebraska may receive such contracts.

(2) Subject to subsection (4) of this section, the Legislature shall appropriate for each year from the Health and Human Services Cash Fund to the department for cancer research an amount derived from two cents of the cigarette tax imposed by section 77-2602 to be used exclusively for grants and contracts for research on cancer and smoking diseases. No amount shall be appropriated or used pursuant to this subsection for the operation and associated expenses of the cancer registry. Not more than one-half of the funds appropriated pursuant to this subsection shall be distributed to the University of Nebraska Medical Center for research in cancer and allied diseases and the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The remaining funds available pursuant to this subsection shall be distributed for contracts with other postsecondary educational institutions having colleges of medicine located in Nebraska which have cancer research programs for the purpose of conducting research in cancer and allied diseases.

(3) Any contract between the department and another postsecondary educational institution for cancer research under subsection (2) of this section shall provide that:

(a) Any money appropriated for such contract shall only be used for cancer research and shall not be used to support any other program in the institution;

(b) Full and detailed reporting of the expenditure of all funds under the contract is required. The report shall include, but not be limited to, separate accounting for personal services, equipment purchases or leases, and supplies. Such reports shall be made available electronically to the Legislature; and

(c) No money appropriated for such contract shall be spent for travel, building construction, or any other purpose not directly related to the research that is the subject of the contract.

(4) The State Treasurer shall transfer seven million dollars from the Health and Human Services Cash Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. It is the intent of the Legislature that the transfer to the General Fund in this subsection be from funds credited to the Cancer Research subfund of the Health and Human Services Cash Fund which were in excess of appropriations established in subsections (1) and (2) of this section.

**Source:** Laws 1981, LB 506, § 2; Laws 1983, LB 192, § 2; Laws 1986, LB 258, § 33; Laws 1986, LB 925, § 1; Laws 1991, LB 703, § 67; Laws 1993, LB 595, § 3; Laws 1996, LB 1044, § 847; Laws 2007, LB296, § 736; Laws 2012, LB782, § 167; Laws 2017, LB331, § 48.

#### (q) PERSONS WITH DISABILITIES

##### **81-6,121 Persons with disabilities; legislative findings and declarations.**

The Legislature finds and declares that:

(1) In 1999 the United States Supreme Court held in the case of *Olmstead v. L.C.*, 527 U.S. 581, that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the federal Americans with Disabilities Act of 1990. The court held that public entities must provide community-based services to persons with disabilities when (a) such services are appropriate, (b) the affected persons do not oppose community-based services, and (c) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity. The court stated that institutional placement of persons who can handle and benefit from community-based services perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life, and that confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment;

(2) Many Nebraskans with disabilities live in institutional placements where they are segregated and isolated with diminished opportunities to participate in community life; and

(3) The United States Supreme Court further stated in the *Olmstead* decision that development of (a) a comprehensive, effective working plan for providing services to qualified persons with disabilities in the most integrated community-based settings and (b) a waiting list that moves at a reasonable pace could be



important ways for a state to demonstrate its commitment to achieving compliance with the federal Americans with Disabilities Act of 1990.

**Source:** Laws 2016, LB1033, § 1.

**81-6,122 Strategic plan for providing services; department; duties; advisory committee; report; contents.**

(1) The Department of Health and Human Services shall develop a comprehensive strategic plan for providing services to qualified persons with disabilities in the most integrated community-based settings pursuant to the Olmstead decision.

(2) The department shall (a) convene a team consisting of persons from each of the six divisions of the department to assess components of the strategic plan which may be in development; (b) consult with other state agencies that administer programs serving persons with disabilities; (c) appoint and convene a stakeholder advisory committee to assist in the review and development of the strategic plan, such committee members to include a representative from the State Advisory Committee on Mental Health Services, the Advisory Committee on Developmental Disabilities, the Nebraska Statewide Independent Living Council, the Nebraska Planning Council on Developmental Disabilities, the Division of Rehabilitation Services in the State Department of Education, a housing authority in a city of the first or second class and a housing authority in a city of the primary or metropolitan class, the Assistive Technology Partnership, the protection and advocacy system for Nebraska, an assisted-living organization, the behavioral health regions, mental health practitioners, developmental disability service providers, an organization that advocates for persons with developmental disabilities, an organization that advocates for persons with mental illness, an organization that advocates for persons with brain injuries, and an area agency on aging, and including two persons with disabilities representing self-advocacy organizations, and, at the department's discretion, other persons with expertise in programs serving persons with disabilities; (d) determine the need for a consultant to assist with the development of the strategic plan; (e) provide a preliminary progress report to the Legislature and the Governor by December 15, 2016, which includes, but is not limited to, (i) the components of the strategic plan which may be in development and (ii) the department's recommendation on hiring a consultant; (f) provide a second progress report to the Legislature and the Governor by December 15, 2017; and (g) provide the completed strategic plan to the Legislature and the Governor by December 15, 2018. The reports and completed plan shall be submitted electronically to the Legislature.

**Source:** Laws 2016, LB1033, § 2.

## ARTICLE 7

### DEPARTMENT OF TRANSPORTATION

#### (a) GENERAL POWERS

##### Section

81-701.01. Department of Transportation; Director-State Engineer; control, management, supervision, administration.

81-701.02. Director-State Engineer; powers; duties.

81-701.03. Department of Transportation; assume highway safety program of Department of Motor Vehicles; reference to Department of Roads in

## Section

contracts or other documents; actions and proceedings; how treated; provisions of law; how construed.

81-701.04. Department of Transportation; fees; deposited with State Treasurer; credited to Highway Cash Fund.

81-701.05. Nebraska Railway Council agreement with railroad; oversight.

## (d) STATE WAYSIDE AREAS

81-710. State wayside areas; powers and duties of department; rules and regulations; contracts authorized.

## (a) GENERAL POWERS

**81-701.01 Department of Transportation; Director-State Engineer; control, management, supervision, administration.**

The Director-State Engineer shall have full control, management, supervision, administration, and direction of the Department of Transportation. All powers and duties lawfully conferred upon the department shall be exercised under the direction of the Director-State Engineer.

**Source:** Laws 1955, c. 338, § 1, p. 1050; Laws 1957, c. 365, § 11, p. 1238; Laws 2017, LB339, § 276.

**81-701.02 Director-State Engineer; powers; duties.**

The Director-State Engineer, for the Department of Transportation, shall:

- (1) Have charge of the records of the department;
- (2) Cause accurate and complete books of account to be kept;
- (3) Supervise the signing of vouchers and orders for supplies, materials, and any other expenditures;
- (4) Contract for consulting services;
- (5) Employ all engineers, assistants, clerks, agents, and other employees required for the proper transaction of the business of the office or of the department and fix their titles, determine their duties and compensation, and discharge them in his or her discretion; and
- (6) Sign and execute or supervise the signing and executing of all documents and papers, including contracts and agreements for highway construction and the purchase of machinery, materials, and supplies.

**Source:** Laws 1955, c. 338, § 2, p. 1050; Laws 1957, c. 365, § 12, p. 1238; Laws 2017, LB339, § 277.

## Cross References

**Geographic Information Systems Council**, member of, see section 86-570.

**Salary**, see section 81-103.

**State Emergency Response Commission**, member of, see section 81-15,210.

**State Highway Commission**, member of, see section 39-1101.

**81-701.03 Department of Transportation; assume highway safety program of Department of Motor Vehicles; reference to Department of Roads in contracts or other documents; actions and proceedings; how treated; provisions of law; how construed.**

- (1) The Department of Transportation shall assume responsibility for the powers and duties of the highway safety program of the Department of Motor

Vehicles, except that the Department of Motor Vehicles shall retain jurisdiction over the Motorcycle Safety Education Act.

(2) On and after July 1, 2017, whenever the Department of Roads is referred to or designated by any contract or other document in connection with the duties and functions of the Department of Transportation, such reference or designation shall apply to the Department of Transportation. All contracts entered into by the Department of Roads prior to July 1, 2017, are hereby recognized, with the Department of Transportation retaining all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be appropriated to the Department of Transportation for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the Department of Transportation for all legal purposes.

(3) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Department of Roads, or the Director-State Engineer or any employee thereof in such Director-State Engineer's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the change of name of the Department of Roads to the Department of Transportation.

(4) On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Department of Roads in connection with duties and functions of the Department of Transportation, such law shall be construed as referring to the Department of Transportation.

**Source:** Laws 2009, LB219, § 2; Laws 2017, LB339, § 278.

#### Cross References

Motorcycle Safety Education Act, see section 60-2120.

### **81-701.04 Department of Transportation; fees; deposited with State Treasurer; credited to Highway Cash Fund.**

There shall be paid to the Department of Transportation in advance for the services of the department, or any officer or employee thereof by the party demanding or necessitating the service, the following fees: For typing a transcript or copy of any instrument recorded or filed in any office of the department, fifteen cents for each one hundred words; for blueprint copy of any map or drawing, or photostatic copy of any record, a reasonable sum to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction; for other copies of drawing, two dollars per hour for the time actually employed; and for certificate and seal, one dollar. The Director-State Engineer shall keep a record of all fees received. Such fees shall be currently deposited with the State Treasurer by the Director-State Engineer for the use of the Highway Cash Fund and the Director-State Engineer shall take his or her receipt therefor and file the same with the records of his or her office.

**Source:** Laws 1957, c. 365, § 23, p. 1241; Laws 1961, c. 181, § 12, p. 543; Laws 2017, LB339, § 279.

#### Cross References

For other provisions for fees, see section 25-1280.

**81-701.05 Nebraska Railway Council agreement with railroad; oversight.**

The Department of Transportation shall oversee any outstanding agreement between a railroad and the Nebraska Railway Council as of August 27, 2011, including making any outstanding payment due to a railroad.

**Source:** Laws 2011, LB259, § 2; Laws 2017, LB339, § 280.

(d) STATE WAYSIDE AREAS

**81-710 State wayside areas; powers and duties of department; rules and regulations; contracts authorized.**

The Department of Transportation shall establish, operate, and maintain state wayside areas. Pursuant to the Administrative Procedure Act, the department may adopt and promulgate rules and regulations necessary to govern the use of state wayside areas and may establish fees for services, including overnight camping.

The department may contract with public or private entities for the operation and maintenance of state wayside areas.

If the department determines that an area is no longer suited or needed as a state wayside area, the department may close such area or any part thereof and declare such area or facilities as surplus. The department shall offer to convey the surplus land or facilities to all local political subdivisions in the vicinity, and if such offers are rejected, the department may sell such lands and facilities.

**Source:** Laws 1983, LB 610, § 7; Laws 2014, LB757, § 2; Laws 2017, LB339, § 281.

Cross References

Administrative Procedure Act, see section 84-920.

**ARTICLE 8**

**INDEPENDENT BOARDS AND COMMISSIONS**

(c) EMERGENCY MANAGEMENT

Section

- 81-829.42. Governor’s Emergency Program; established.
- 81-829.49. Local government, school district, or educational service unit appropriations.
- 81-829.51. Local government; school district; educational service unit; emergency expenditures; vote of governing body; when.

(g) REAL ESTATE COMMISSION

- 81-885. Act, how cited.
- 81-885.01. Terms, defined.
- 81-885.13. License; conditions for issuance; enumerated; examination; fingerprinting; criminal history record information check; courses of study.
- 81-885.15. Fees; deposited in State Real Estate Commission’s Fund; investment.
- 81-885.16. Real Property Appraiser Act; applicability; broker’s price opinion or comparative market analysis; requirements.
- 81-885.17. Nonresident broker’s license; nonresident salesperson’s license; issuance; requirements; fingerprinting; criminal history record information check; reciprocal agreements.
- 81-885.19. License; form; broker’s branch office; license; fee.
- 81-885.21. Broker; separate trust account; notify commission where maintained; examination by representative of commission; exemption.

## Section

- 81-885.24. Commission; investigative powers; disciplinary powers; civil fine; violations of unfair trade practices.
- 81-885.56. Team leader.

## (i) LAND SURVEYING

- 81-8,108. Land surveying; declaration of policy; prohibited acts.
- 81-8,108.01. Land Surveyors Regulation Act; act, how cited.
- 81-8,109. Land surveying; definitions.
- 81-8,110.01. Examining board; members; terms; qualifications; removal; vacancies.
- 81-8,110.07. Examining board; secretary; duties; Land Surveyor Examiner's Fund; created; purpose; investment.
- 81-8,111. Code of practice; contents; board; powers.
- 81-8,118. Land surveying; application and registration fees; examination fee; failure to pay fees, effect.
- 81-8,119.01. Certificate of registration; renewal; professional development requirements; inactive status.
- 81-8,120. Land surveying; nonresident; registration; fee; service of process.
- 81-8,122.01. Land survey; filing; contents.
- 81-8,123. Land surveyor; complaint; probation, suspension, or revocation of registration; grounds.
- 81-8,126. Act; applicability.
- 81-8,127. Land surveying; unlawful practice or use of title; penalty.

## (j) STATE ATHLETIC COMMISSIONER

- 81-8,129. State Athletic Commissioner; jurisdiction; activities covered.
- 81-8,130.01. Professional matches; promoters; licenses and permits; fee.
- 81-8,132. Licensee; bond; conditions.
- 81-8,133. Referees; license; duties; fee.
- 81-8,133.01. Other officials and contestants; license required; fees; revocation of license.
- 81-8,135. Licensee; reports; contents; gross receipts tax; amounts.
- 81-8,139. State Athletic Commissioner; rules and regulations; powers; suspension of contestant from competition; fine; hearing; notice.

## (p) TORT CLAIMS, STATE CLAIMS BOARD, AND RISK MANAGEMENT PROGRAM

- 81-8,211. Risk Manager; State Claims Board; authority; procedure; fees.
- 81-8,219. State Tort Claims Act; claims exempt.
- 81-8,236. Correctional institution incident; costs of prosecution; claim by county; Risk Manager; powers and duties.
- 81-8,239.03. Risk Manager; present budget request; contents; deficiency appropriation; procedure; investment.

## (q) PUBLIC COUNSEL

- 81-8,241. Public Counsel; established; powers and duties; appointment.
- 81-8,244. Public Counsel; personnel; appointment; compensation; authority; appoint Inspector General of Nebraska Child Welfare; appoint Inspector General of the Nebraska Correctional System.
- 81-8,245. Public Counsel; powers; enumerated.

## (y) NEBRASKA SESQUICENTENNIAL COMMISSION

- 81-8,310. Nebraska Sesquicentennial Commission; duties; powers; report.

## (c) EMERGENCY MANAGEMENT

**81-829.42 Governor's Emergency Program; established.**

(1) The Legislature recognizes that, while appropriations are adequate to meet the normal needs, the necessity exists for anticipating and making advance provision to care for the unusual and extraordinary burdens imposed on the state and its political subdivisions by disasters, emergencies, or civil defense emergencies. To meet such situations, it is the intention of the Legisla-

ture to confer emergency powers on the Governor, acting through the Adjutant General and the Nebraska Emergency Management Agency, and to vest him or her with adequate power and authority within the limitation of available funds appropriated to the Governor's Emergency Program to meet any disaster, emergency, or civil defense emergency.

(2) There is hereby established the Governor's Emergency Program. Funds appropriated to the program shall be expended, upon direction of the Governor, for any state of emergency. The state of emergency proclamation shall set forth the emergency and shall state that it requires the expenditure of public funds to furnish immediate aid and relief. The Adjutant General shall administer the funds appropriated to the program.

(3) It is the intent of the Legislature that the first recourse shall be to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds are unreasonably great, he or she may make funds available from the Governor's Emergency Program. Expenditures may be made upon the direction of the Governor for any or all emergency management functions or to meet the intent of the state emergency operations plans as outlined in section 81-829.41. Expenditures may also be made to state and federal agencies to meet the matching requirement of any applicable assistance programs.

(4) Assistance shall be provided from the funds appropriated to the Governor's Emergency Program to political subdivisions of this state which have suffered from a disaster, emergency, or civil defense emergency to such an extent as to impose a severe financial burden exceeding the ordinary capacity of the subdivision affected. Applications for aid under this section shall be made to the Nebraska Emergency Management Agency on such forms as shall be prescribed and furnished by the agency. The forms shall require the furnishing of sufficient information to determine eligibility for aid and the extent of the financial burden incurred. The agency may call upon other agencies of the state in evaluating such applications. The Adjutant General shall review each application for aid under this section and recommend its approval or disapproval, in whole or in part, to the Governor. If the Governor approves, he or she shall determine and certify to the Adjutant General the amount of aid to be furnished. The Adjutant General shall thereupon issue his or her voucher to the Director of Administrative Services who shall issue his or her warrants therefor to the applicant.

(5) When a state of emergency has been proclaimed by the Governor, the Adjutant General, upon order of the Governor, shall have authority to expend funds for purposes including, but not limited to:

(a) The purposes of the Emergency Management Act, including emergency management functions and the responsibilities of the Governor as outlined in the act;

(b) Employing for the duration of the state of emergency additional personnel and contracting or otherwise procuring all necessary appliances, supplies, and equipment;

(c) Performing services for and furnishing materials and supplies to state government agencies and local governments with respect to performance of any duties enjoined by law upon such agencies and local governments which they are unable to perform because of extreme climatic phenomena and receiving reimbursement in whole or in part from such agencies and local

governments able to pay therefor under such terms and conditions as may be agreed upon by the Adjutant General and any such agency or local government;

(d) Performing services for and furnishing materials to any individual in connection with alleviating hardship and distress growing out of extreme climatic phenomena and receiving reimbursement in whole or in part from such individual under such terms as may be agreed upon by the Adjutant General and such individual;

(e) Opening up, repairing, and restoring roads and highways;

(f) Repairing and restoring bridges;

(g) Furnishing transportation for supplies to alleviate suffering and distress;

(h) Restoring means of communication;

(i) Furnishing medical services and supplies to prevent the spread of disease and epidemics;

(j) Quelling riots and civil disturbances;

(k) Training individuals or governmental agencies for the purpose of perfecting the performance of emergency management duties as provided in the Nebraska emergency operations plans;

(l) Procurement and storage of special emergency supplies or equipment, determined by the Adjutant General to be required to provide rapid response by state government to assist local governments in impending or actual disasters, emergencies, or civil defense emergencies;

(m) Clearing or removing debris and wreckage which may threaten public health or safety from publicly owned or privately owned land or water; and

(n) Such other measures as are customarily necessary to furnish adequate relief in cases of disaster, emergency, or civil defense emergency.

(6) If response to a disaster or emergency is immediately required, the Adjutant General may make expenditures of up to twenty-five thousand dollars per event without a state of emergency proclamation issued by the Governor. Such expenditures shall be used for the purposes as provided in subsection (5) of this section.

(7) The Governor may receive such voluntary contributions as may be made from any nonfederal source to aid in carrying out the purposes of this section and shall credit the same to the Governor's Emergency Cash Fund.

(8) All obligations and expenses incurred by the Governor in the exercise of the powers and duties vested in the Governor by this section shall be paid by the State Treasurer out of available funds appropriated to the Governor's Emergency Program, and the Director of Administrative Services shall draw his or her warrants upon the State Treasurer for the payment of such sum, or so much thereof as may be required, upon receipt by him or her of proper vouchers duly approved by the Adjutant General.

(9) This section shall be liberally construed in order to accomplish the purposes of the Emergency Management Act and to permit the Governor to adequately cope with any disaster, emergency, or civil defense emergency which may arise, and the powers vested in the Governor by this section shall be construed as being in addition to all other powers presently vested in him or her and not in derogation of any existing powers.

(10) Such funds as may be made available by the government of the United States for the purpose of alleviating distress from disasters, emergencies, and

civil defense emergencies may be accepted by the State Treasurer and shall be credited to a separate and distinct fund unless otherwise specifically provided in the act of Congress making such funds available or as otherwise allowed and provided by state law.

**Source:** Laws 1973, LB 494, § 7; Laws 1975, LB 612, § 2; Laws 1986, LB 258, § 34; Laws 1995, LB 7, § 107; Laws 1996, LB 43, § 23; Laws 2003, LB 403, § 8; Laws 2012, LB766, § 1; Laws 2014, LB390, § 3; Laws 2015, LB55, § 1.

**81-829.49 Local government, school district, or educational service unit appropriations.**

Each local government, school district, or educational service unit shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such local government, school district, or educational service unit for the payment of expenses of its city, village, county, school district, educational service unit, or interjurisdictional emergency management organization and in furthering the purposes of the Emergency Management Act.

**Source:** Laws 1951, c. 315, § 10(1), p. 1081; R.R.S.1943, § 81-829.22; Laws 1973, LB 494, § 14; Laws 1996, LB 43, § 29; Laws 2015, LB283, § 4.

**81-829.51 Local government; school district; educational service unit; emergency expenditures; vote of governing body; when.**

(1)(a) In the event of a disaster, emergency, or civil defense emergency, each local government may make emergency expenditures, enter into contracts, and incur obligations for emergency management purposes regardless of existing statutory limitations and requirements pertaining to appropriation, budgeting, levies, or the manner of entering into contracts.

(b) In the event of a disaster, emergency, or civil defense emergency, each school district or educational service unit may make emergency expenditures, enter into contracts, and incur obligations for emergency management purposes and to minimize the disruption to education services regardless of existing statutory limitations and requirements pertaining to appropriation, budgeting, or the manner of entering into contracts.

(2) If any such expenditure, contract, or obligation will be in excess of or in violation of existing statutory limitations or requirements, then before any such expenditure, contract, or obligation is undertaken it shall be approved by a vote of the governing body of such local government, school district, or educational service unit. The governing body may not vote its approval unless it has secured a copy of the proclamation as provided in section 81-829.50 from the city, village, county, or interjurisdictional emergency management director serving such local government, school district, or educational service unit. For school districts and educational service units, the proclamation shall be secured from the county in which the school district or principal office of the educational service unit is located.

**Source:** Laws 1951, c. 315, § 10(2), p. 1081; R.R.S.1943, § 81-829.23; Laws 1973, LB 494, § 16; Laws 1996, LB 43, § 31; Laws 2015, LB283, § 5.



## (g) REAL ESTATE COMMISSION

**81-885 Act, how cited.**

Sections 81-885 to 81-885.56 shall be known and may be cited as the Nebraska Real Estate License Act.

**Source:** Laws 2009, LB30, § 1; Laws 2010, LB931, § 26; Laws 2016, LB678, § 1.

**81-885.01 Terms, defined.**

For purposes of the Nebraska Real Estate License Act, unless the context otherwise requires:

(1) Real estate means and includes condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker means a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Designated broker means an individual holding a broker's license who has full authority to conduct the real estate activities of a real estate business. In a sole proprietorship, the owner, or broker identified by the owner, shall be the designated broker. In the event the owner identifies the designated broker, the owner shall file a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the sole proprietorship. In a partnership, limited liability company, or corporation, the partners, limited liability company members, or board of directors shall identify the designated broker for its real estate business by filing a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the partnership, limited liability company, or corporation. The designated broker shall also be responsible for supervising the real estate activities of any associate brokers or salespersons;

(5) Inactive broker means an associate broker whose license has been returned to the commission by the licensee's broker, a broker who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker or have the license issued as an

individual broker, or a broker whose license has been placed on inactive status under statute, rule, or regulation;

(6) Salesperson means any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

(7) Inactive salesperson means a salesperson whose license has been returned to the commission by the licensee's broker, a salesperson who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker, or a salesperson whose license has been placed on inactive status under statute, rule, or regulation;

(8) Person means and includes individuals, corporations, partnerships, and limited liability companies, except that when referring to a person licensed under the act, it means an individual;

(9) Team means two or more persons licensed by the commission who (a) work under the supervision of the same broker, (b) work together on real estate transactions to provide real estate brokerage services, (c) represent themselves to the public as being part of a team, and (d) are designated by a team name;

(10) Team leader means any person licensed by the commission and appointed or recognized by his or her broker as the leader for his or her team;

(11) Subdivision or subdivided land means any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

(12) Subdivider means any person who causes land to be subdivided into a subdivision for himself, herself, or others or who undertakes to develop a subdivision but does not include a public agency or officer authorized by law to create subdivisions;

(13) Purchaser means a person who acquires or attempts to acquire or succeeds to an interest in land;

(14) Commission means the State Real Estate Commission;

(15) Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of (a) listing, purchase, or sale, (b) originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction, or (c) real property tax appeals;

(16) Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of (a) listing, purchase, or sale, (b) originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction, or (c) real property tax appeals;

(17) Distance education means courses in which instruction does not take place in a traditional classroom setting, but rather through other media by which instructor and student are separated by distance and sometimes by time;

(18) Regulatory jurisdiction means a state, district, or territory of the United States, a province of Canada or a foreign country, or a political subdivision of a foreign country, which has implemented and administers laws regulating the activities of a broker;

(19) Federal financial institution regulatory agency means (a) the Board of Governors of the Federal Reserve System, (b) the Federal Deposit Insurance Corporation, (c) the Office of the Comptroller of the Currency, (d) the Office of Thrift Supervision, (e) the National Credit Union Administration, or (f) the successors of any of those agencies; and

(20) Federally related transaction means a real-estate-related transaction that (a) requires the services of an appraiser and (b) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

**Source:** Laws 1973, LB 68, § 1; Laws 1979, LB 68, § 1; Laws 1983, LB 182, § 1; Laws 1990, LB 350, § 1; Laws 1991, LB 118, § 2; Laws 1993, LB 121, § 529; Laws 1999, LB 618, § 6; Laws 2002, LB 863, § 10; Laws 2007, LB26, § 1; Laws 2010, LB931, § 27; Laws 2015, LB375, § 1; Laws 2016, LB678, § 2.

**81-885.13 License; conditions for issuance; enumerated; examination; fingerprinting; criminal history record information check; courses of study.**

(1) No broker's or salesperson's license shall be issued to any person who has not attained the age of nineteen years. No broker's or salesperson's license shall be issued to any person who is not a high school graduate or the holder of a certificate of high school equivalency.

(2) Each applicant for a salesperson's license shall furnish evidence that he or she has completed two courses in real estate subjects, approved by the commission, composed of not less than sixty class hours of study or, in lieu thereof, courses delivered in a distance education format approved by the commission.

(3) Each applicant for a broker's license shall either (a) have first served actively for two years as a licensed salesperson or broker and shall furnish evidence of completion of sixty class hours in addition to the hours required by subsection (2) of this section in a course of study approved by the commission or, in lieu thereof, courses delivered in a distance education format approved by the commission, or (b) furnish a certificate that he or she has passed a course of at least eighteen credit hours in subjects related to real estate at an accredited university or college, or completed six courses in real estate subjects composed of not less than one hundred eighty class hours in a course of study approved by the commission or, in lieu thereof, courses delivered in a distance education format approved by the commission.

(4) Each applicant for a broker's license must pass a written examination covering generally the matters confronting real estate brokers, and each applicant for a salesperson's license must pass a written examination covering generally the matters confronting real estate salespersons. Such examination may be taken before the commission or any person designated by the commission. Failure to pass the examination shall be grounds for denial of a license without further hearing. Within thirty days after passing the examination the applicant must complete all requirements necessary for the issuance of a license. The commission may prepare and distribute to licensees under the Nebraska Real Estate License Act informational material deemed of assistance in the conduct of their business.

(5) An applicant for an original broker's or salesperson's license shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. After filing application for a license, each applicant shall furnish directly to the Nebraska State Patrol, or to a fingerprint processing service that may be selected by the commission for this purpose, a full set of fingerprints to enable a criminal background investigation to be conducted. The applicant shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The applicant shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The applicant shall authorize release of the national criminal history record check to the commission.

(6) Courses of study, referred to in subsections (2) and (3) of this section, shall include courses offered by private proprietary real estate schools when such courses are prescribed by the commission and are taught by instructors approved by the commission. The commission shall monitor schools offering approved real estate courses and for good cause shall have authority to suspend or withdraw approval of such courses or instructors.

**Source:** Laws 1973, LB 68, § 13; Laws 1973, LB 580, § 1; Laws 1978, LB 361, § 6; Laws 1980, LB 936, § 1; Laws 1983, LB 182, § 12; Laws 2002, LB 863, § 14; Laws 2003, LB 60, § 1; Laws 2014, LB687, § 2; Laws 2017, LB16, § 1.

**81-885.15 Fees; deposited in State Real Estate Commission's Fund; investment.**

All fees collected under the Nebraska Real Estate License Act shall be deposited in the state treasury in a fund to be known as the State Real Estate Commission's Fund. The commission may use such part of the money in this fund as is necessary to be used by it in the administration and enforcement of the act. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2019. The State Real Estate Commission's Fund shall be paid out only upon proper vouchers and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer, as provided by law. The expenses of conducting the office must always be kept within the income collected and deposited with the State Treasurer by such commission and such office, and the expense thereof shall not be supported or paid from any other state fund. Any money in the State Real Estate Commission's 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 two hundred thousand dollars from the State Real Estate Commission's Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. The State Treasurer shall transfer two hundred thousand dollars from the State Real Estate Commission's Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget

administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1973, LB 68, § 15; Laws 1983, LB 182, § 14; Laws 2009, LB30, § 6; Laws 2009, First Spec. Sess., LB3, § 68; Laws 2017, LB331, § 49.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-885.16 Real Property Appraiser Act; applicability; broker's price opinion or comparative market analysis; requirements.**

(1) The Real Property Appraiser Act shall not apply to a person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal.

(2) No compensation, fee, or other consideration shall be charged for a broker's price opinion or comparative market analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing, is signed by the preparer, includes the date on which it was prepared, and contains or has attached thereto the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property, for lending purposes in a transaction other than a federally related transaction, or for real property tax appeal purposes. This opinion or analysis is not governed by the Real Property Appraiser Act.

(3) A broker's price opinion or comparative market analysis prepared for an existing or potential lienholder originating, extending, renewing, or modifying a loan in a transaction other than a federally related transaction may not be used as the sole basis to determine the value of the real estate for the purpose of originating a loan secured by such real estate, and the person giving the opinion or analysis must be engaged directly by the lienholder or its agent. Such person shall have no duty to inquire as to any other basis used to determine such value.

**Source:** Laws 2010, LB931, § 28; Laws 2015, LB375, § 2.

**Cross References**

Real Property Appraiser Act, see section 76-2201.

**81-885.17 Nonresident broker's license; nonresident salesperson's license; issuance; requirements; fingerprinting; criminal history record information check; reciprocal agreements.**

(1)(a) A nonresident of this state who is actively engaged in the real estate business, who maintains a place of business in his or her resident regulatory jurisdiction, and who has been duly licensed in that regulatory jurisdiction to conduct such business in that regulatory jurisdiction may, in the discretion of the commission, be issued a nonresident broker's license.

(b) A nonresident salesperson employed by a broker holding a nonresident broker's license may, in the discretion of the commission, be issued a nonresident salesperson's license under such nonresident broker.

(c) A nonresident who becomes a resident of the State of Nebraska and who holds a broker's or salesperson's license in his or her prior resident regulatory jurisdiction shall be issued a resident broker's or salesperson's license upon filing an application, paying the applicable license fee, complying with the criminal history record information check under subsection (4) of this section, filing the affidavit required by subsection (7) of this section, and providing to the commission adequate proof of completion of a three-hour class approved by the commission specific to the Nebraska Real Estate License Act and sections 76-2401 to 76-2430.

(2) Obtaining a nonresident broker's license shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the licensee in any action arising out of the licensee's activity in this state.

(3) Prior to the issuance of any license to a nonresident applicant, he or she shall: (a) File with the commission a duly certified copy of the license issued to the applicant by his or her resident regulatory jurisdiction or provide verification of such licensure to the commission; (b) pay to the commission the nonresident license fee as provided in section 81-885.14 for the obtaining of a broker's or salesperson's license; and (c) provide to the commission adequate proof of completion of a three-hour class approved by the commission specific to the Nebraska Real Estate License Act and sections 76-2401 to 76-2430.

(4) An applicant for an original nonresident broker's or salesperson's license shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. After filing application for a license, each applicant shall furnish directly to the Nebraska State Patrol, or to a fingerprint processing service that may be selected by the commission for this purpose, a full set of fingerprints to enable a criminal background investigation to be conducted. The applicant shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The applicant shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The applicant shall authorize release of the national criminal history record check to the commission.

(5) Nothing in this section shall preclude the commission from entering into reciprocal agreements with other regulatory jurisdictions when such agreements are necessary to provide Nebraska residents authority to secure licenses in other regulatory jurisdictions.

(6) Nonresident licenses granted as provided in this section shall remain in force for only as long as the requirements of issuing and maintaining a license are met unless (a) suspended or revoked by the commission for just cause or (b) lapsed for failure to pay the annual renewal fee.

(7) Prior to the issuance of any license to a nonresident applicant, he or she shall file an affidavit with the commission certifying that the applicant has reviewed and is familiar with the Nebraska Real Estate License Act and the

rules and regulations of the commission and agrees to be bound by the act, rules, and regulations.

**Source:** Laws 1973, LB 68, § 17; Laws 1980, LB 936, § 3; Laws 1983, LB 182, § 15; Laws 1983, LB 447, § 95; Laws 1990, LB 350, § 7; Laws 2002, LB 863, § 15; Laws 2003, LB 60, § 2; Laws 2006, LB 819, § 2; Laws 2008, LB715, § 1; Laws 2011, LB25, § 16; Laws 2014, LB687, § 3; Laws 2017, LB16, § 2.

**81-885.19 License; form; broker's branch office; license; fee.**

(1) The commission shall prescribe the forms of brokers' and salespersons' licenses.

(2) If a broker maintains more than one place of business within the state, he or she shall obtain a branch office license for each branch office so maintained by him or her. The commission shall issue a branch office license upon the payment of an annual fee to be established by the commission of not more than fifty dollars per license. The broker or an associate broker shall be the manager of a branch office.

(3) The commission shall provide for verification of the current status of licenses electronically or by other means readily available to the public.

**Source:** Laws 1973, LB 68, § 19; Laws 1983, LB 182, § 17; Laws 1990, LB 350, § 9; Laws 1991, LB 204, § 3; Laws 2002, LB 863, § 17; Laws 2009, LB29, § 1; Laws 2011, LB23, § 2; Laws 2017, LB16, § 3.

**81-885.21 Broker; separate trust account; notify commission where maintained; examination by representative of commission; exemption.**

(1) Except as provided in subsection (7) of this section, each broker other than an inactive broker shall maintain in a bank, savings bank, building and loan association, or savings and loan association a separate, insured checking account in this state in his or her name or the name under which he or she does business which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him or her, his or her associate brokers, or his or her salespersons on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing. Such trust account may be either an interest-bearing or a non-interest-bearing account. Any broker using an interest-bearing account shall comply with subsection (6) of this section.

(2) Each broker shall notify the commission of the name of the bank, savings bank, building and loan association, or savings and loan association in which the trust account is maintained and also the name of the account on forms provided therefor.

(3) Each broker shall authorize the commission to examine such trust account by a duly authorized representative of the commission. Such examination shall be made annually or at such time as the commission may direct.

(4) A broker may maintain more than one trust account in his or her name or the name under which he or she does business if the commission is advised of such account as required in subsection (2) of this section.

(5) In the event a branch office maintains a separate trust account, a separate bookkeeping system shall be maintained in the branch office.

(6) If the trust account is an interest-bearing account, as authorized under subsection (1) of this section, the interest from the interest-bearing account may be distributed or otherwise accrue only to nonprofit organizations that promote housing in Nebraska and that are exempt from the payment of federal income taxes. A broker may use an interest-bearing account for a transaction only if the use of such account for purposes of promoting housing in Nebraska has been approved by all parties whose money will be deposited into such account. The commission may further define policies and procedures for the processing of and distributions from interest-bearing trust accounts by rule and regulation.

(7) The commission may adopt and promulgate rules and regulations to exempt active brokers who have no trust account activity and no anticipated trust account activity from the trust account requirements of this section.

**Source:** Laws 1973, LB 68, § 21; Laws 1975, LB 354, § 2; Laws 1978, LB 361, § 8; Laws 1981, LB 238, § 1; Laws 1991, LB 118, § 4; Laws 2000, LB 932, § 52; Laws 2002, LB 863, § 18; Laws 2011, LB347, § 1; Laws 2013, LB72, § 1; Laws 2017, LB16, § 4.

**81-885.24 Commission; investigative powers; disciplinary powers; civil fine; violations of unfair trade practices.**

The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any broker, associate broker, salesperson, or subdivider, may censure the licensee or certificate holder, revoke or suspend any license or certificate issued under the Nebraska Real Estate License Act, or enter into consent orders, and, alone or in combination with such disciplinary actions, may impose a civil fine on a licensee pursuant to section 81-885.10, whenever the license or certificate has been obtained by false or fraudulent representation or the licensee or certificate holder has been found guilty of any of the following unfair trade practices:

(1) Refusing because of religion, race, color, national origin, ethnic group, sex, familial status, or disability to show, sell, or rent any real estate for sale or rent to prospective purchasers or renters;

(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into his or her possession belonging to others;

(4) Commingling the money or other property of his or her principals with his or her own;

(5) Failing to maintain and deposit in a separate trust account all money received by a broker acting in such capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in the funds have agreed otherwise in writing;

(6) Accepting, giving, or charging any form of undisclosed compensation, consideration, rebate, or direct profit on expenditures made for a principal;

(7) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge and consent of the employer;



(8) Accepting any form of compensation or consideration by an associate broker or salesperson from anyone other than his or her employing broker without the consent of his or her employing broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or his or her authorized agent;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent;

(13) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(14) Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract;

(15) Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion;

(16) Violating any provision of sections 76-2401 to 76-2430;

(17) Soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate;

(18) Providing any form of compensation or consideration to any person for performing the services of a broker, associate broker, or salesperson who has not first secured his or her license under the Nebraska Real Estate License Act unless such person is (a) a nonresident who is licensed in his or her resident regulatory jurisdiction or (b) a citizen and resident of a foreign country which does not license persons conducting the activities of a broker and such person provides reasonable written evidence to the Nebraska broker that he or she is a resident citizen of that foreign country, is not a resident of this country, and conducts the activities of a broker in that foreign country;

(19) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal;

(20) Failing to deliver within a reasonable time a completed and dated copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(21) Failing by a broker to deliver to the seller in every real estate transaction, at the time the transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller, failing to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and

for what the same was disbursed, and failing to retain true copies of such statements in his or her files;

(22) Making any substantial misrepresentations;

(23) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts;

(24) Failing by an associate broker or salesperson to place, as soon after receipt as practicable, in the custody of his or her employing broker any deposit money or other money or funds entrusted to him or her by any person dealing with him or her as the representative of his or her licensed broker;

(25) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose of casting a cloud upon the title to real estate when no valid claim under the listing contract exists;

(26) Violating any rule or regulation adopted and promulgated by the commission in the interest of the public and consistent with the Nebraska Real Estate License Act;

(27) Failing by a subdivider, after the original certificate has been issued, to comply with all of the requirements of the Nebraska Real Estate License Act;

(28) Conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge by a broker or salesperson;

(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, whether of the same or of a different character as otherwise specified in this section;

(30) Inducing or attempting to induce a person to transfer an interest in real property, whether or not for monetary gain, or discouraging another person from purchasing real property, by representing that (a) a change has occurred or will or may occur in the composition with respect to religion, race, color, national origin, ethnic group, sex, familial status, or disability of the owners or occupants in the block, neighborhood, or area or (b) such change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area;

(31) Failing by a team leader to provide a current list of all team members to his or her designated broker;

(32) Failing by a designated broker to maintain a record of all team leaders and team members working under him or her;

(33) Utilizing advertising which does not prominently display the name under which the designated broker does business as filed with the commission;

(34) Utilizing team advertising or a team name suggesting the team is an independent real estate brokerage; or

(35) Charging or collecting, as part or all of his or her compensation or consideration, any part of the earnest money or other money paid to him or her or the entity under which he or she does business in connection with any real estate transaction until the transaction has been consummated or terminated. However, a payment for goods or services rendered by a third party on behalf of the client shall not be considered compensation or consideration if such payment does not include any profit, compensation, or payment for services

rendered by the broker and the broker retains a record of the payment to the third party for such goods or services.

**Source:** Laws 1973, LB 68, § 24; Laws 1975, LB 354, § 3; Laws 1978, LB 361, § 10; Laws 1981, LB 238, § 2; Laws 1982, LB 403, § 1; Laws 1983, LB 182, § 20; Laws 1985, LB 109, § 1; Laws 1990, LB 350, § 11; Laws 2002, LB 863, § 19; Laws 2009, LB30, § 7; Laws 2011, LB25, § 17; Laws 2011, LB347, § 2; Laws 2016, LB678, § 4; Laws 2017, LB16, § 5.

#### **81-885.56 Team leader.**

A team leader shall be responsible for supervising the real estate activities of his or her team performed under the Nebraska Real Estate License Act subject to the overall supervision by the designated broker of the team leader and team members.

**Source:** Laws 2016, LB678, § 3.

### (i) LAND SURVEYING

#### **81-8,108 Land surveying; declaration of policy; prohibited acts.**

In order to safeguard life, health, and property, any person practicing or offering to practice land surveying in this state shall submit evidence that he or she is qualified to practice and shall be registered as provided in the Land Surveyors Regulation Act. It shall be unlawful for any person to practice or to offer to practice land surveying in this state unless such person has been duly registered under the act.

**Source:** Laws 1957, c. 383, § 1, p. 1332; Laws 1994, LB 874, § 1; Laws 2015, LB138, § 6.

#### **81-8,108.01 Land Surveyors Regulation Act; act, how cited.**

Sections 81-8,108 to 81-8,127 shall be known and may be cited as the Land Surveyors Regulation Act.

**Source:** Laws 2015, LB138, § 5.

#### **81-8,109 Land surveying; definitions.**

For purposes of the Land Surveyors Regulation Act, unless the context otherwise requires:

(1) Board or examining board means the State Board of Examiners for Land Surveyors;

(2) Land surveyor means a person who engages in the practice of land surveying;

(3) Surveyor-in-training means a person (a) who is a graduate in an approved surveying or engineering curriculum of four years or more or who has had four or more years of experience in surveying work of a character satisfactory to the examining board and (b) who has successfully passed the examination in the fundamental surveying subjects and has received from the examining board a certificate stating that that portion of the examination has been successfully passed. The fee for such certificate and for the renewal of such certificate shall be set by the examining board; and

(4) Land surveying means the establishment or reestablishment of corners and boundaries and the location of lots, parcels, tracts, or divisions of land, which may include distance, direction, elevation, and acreage, and the correct determination and description of lots, parcels, tracts, or divisions of land for, but not limited to, any of the following purposes:

(a) To furnish a legal description of any tract of land to be used in the preparation of deeds of conveyance when the description is not the same as the one in the deed of conveyance to the current owner or when bearings, distances, or measurements are needed to properly describe the tract being conveyed;

(b) To furnish a legal description of any land surveyed to be used in the platting or subdividing of the land;

(c) To determine the amount of acreage contained in any land surveyed; or

(d) To furnish a topographic plat of a lot, parcel, tract, or division of land and locating natural and artificial features in the air, on the surface or subsurface of the earth, and on the beds or surface of bodies of water for the purpose of establishing the facts of size, area, shape, topography, and orientation of improved or unimproved real property and appurtenances to the real property.

**Source:** Laws 1957, c. 383, § 2, p. 1332; Laws 1971, LB 442, § 1; Laws 1989, LB 263, § 1; Laws 1994, LB 874, § 2; Laws 2015, LB138, § 7.

**81-8,110.01 Examining board; members; terms; qualifications; removal; vacancies.**

(1) The examining board shall consist of four members appointed by the Governor who are duly registered under the Land Surveyors Regulation Act to practice land surveying and one lay member appointed by the Governor who is of the age of legal majority and has been a resident of Nebraska for at least one year immediately prior to appointment to the examining board. Such lay member shall be a representative of consumer viewpoints.

(2) The members of the examining board shall be appointed to five-year terms. Each member shall serve until the appointment and qualification of his or her successor. Each member appointed to the examining board shall receive a certificate of appointment from the Governor. Each member so appointed, prior to beginning his or her term, shall file with the Secretary of State the constitutional oath of office. The Governor may remove any member of the examining board for misconduct, incompetency, incapacity, or neglect of duty or upon conviction of a crime involving moral turpitude. Vacancies on the examining board, however created, shall be filled for the unexpired term of the member by appointment by the Governor.

**Source:** Laws 1971, LB 442, § 3; Laws 1984, LB 478, § 2; Laws 1994, LB 874, § 3; Laws 2015, LB138, § 8.

**81-8,110.07 Examining board; secretary; duties; Land Surveyor Examiner's Fund; created; purpose; investment.**

The secretary of the examining board shall receive and account for all money derived from the operation of the Land Surveyors Regulation Act and shall remit it to the State Treasurer for credit to the Land Surveyor Examiner's Fund, which fund is hereby created. This fund shall be continued from year to

year. When appropriated by the Legislature, this fund shall be expended only for the purposes of the Land Surveyors Regulation Act. When not reappropriated for the succeeding biennium, the money in this fund shall not revert to the General Fund. The fund shall be paid out only upon vouchers approved by the examining board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer. The expenditures of the examining board shall be kept within the income collected and remitted to the State Treasurer by the examining board. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Land Surveyor Examiner's 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 442, § 9; Laws 1986, LB 258, § 35; Laws 1994, LB 874, § 9; Laws 1995, LB 7, § 110; Laws 2009, First Spec. Sess., LB3, § 69; Laws 2015, LB138, § 9.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **81-8,111 Code of practice; contents; board; powers.**

(1) The Legislature hereby finds and declares that a code of practice established by the board by which land surveyors could govern their professional conduct would be beneficial to the state and would safeguard the life, health, and property of the citizens of this state. The code of practice shall include provisions on:

- (a) Professional competence;
- (b) Conflict of interest;
- (c) Full disclosure of financial interest;
- (d) Full disclosure of matters affecting public safety, health, and welfare;
- (e) Compliance with laws;
- (f) Professional conduct and good character standards; and
- (g) Practice of land surveying.

(2) The board may adopt and promulgate rules and regulations to establish a code of practice.

(3) The board may publish commentaries regarding the code of practice. The commentaries shall explain the meaning of interpretations given to the code by the board.

**Source:** Laws 2015, LB138, § 10.

### **81-8,118 Land surveying; application and registration fees; examination fee; failure to pay fees, effect.**

To pay the expense of the operation and enforcement of the Land Surveyors Regulation Act, the examining board shall establish application and registration fees. Total application and registration fees shall not exceed two hundred dollars and shall be in addition to the examination fee which shall be set to recover the costs of the examination and its administration. The board may direct applicants to pay the examination fee directly to a third party who has contracted to administer the examination. At the time the application for

registration is submitted the board shall collect from the applicant a nonrefundable application fee. If the applicant successfully qualifies by examination, he or she shall be registered until April 1 of the immediately following odd-numbered year upon payment of a registration fee as set forth in the rules or regulations. After the issuance of a certificate of registration, a biennial fee of not less than five nor more than one hundred fifty dollars, as the examining board shall direct, shall be due and payable on or before January 1 of each odd-numbered year. Failure to remit biennial fees when due shall automatically cancel the registration effective the immediately following April 1, but otherwise the registration shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the examining board for just cause. A registration which has been canceled for failure to pay the biennial fee when due may be reinstated within one year, but the biennial fee shall be increased ten percent for each month or fraction of a month that payment is delayed. Nothing in this section shall prevent the examining board from suspending or revoking any registration for just cause.

**Source:** Laws 1957, c. 383, § 11, p. 1335; Laws 1971, LB 442, § 22; Laws 1985, LB 564, § 1; Laws 1986, LB 621, § 1; Laws 1994, LB 874, § 16; Laws 2007, LB252, § 1; Laws 2015, LB138, § 11.

**81-8,119.01 Certificate of registration; renewal; professional development requirements; inactive status.**

(1) As a condition for renewal of a certificate of registration issued pursuant to the Land Surveyors Regulation Act, a certificate holder who has previously renewed his or her registration shall be required to successfully complete thirty hours of professional development within the preceding two calendar years. Any certificate holder who completes in excess of thirty hours of professional development within the preceding two calendar years may have the excess, not to exceed fifteen hours, applied to the requirement for the next biennium.

(2) The examining board shall not renew the certificate of registration of any certificate holder who has failed to complete the professional development requirements pursuant to subsection (1) of this section, unless he or she can show good cause why he or she was unable to comply with such requirements. If the examining board determines that good cause was shown, the examining board shall permit the registered surveyor to make up all outstanding required hours of professional development.

(3) A certificate holder may at any time prior to the termination of his or her registration request to be classified as inactive. Such inactive registrations may be maintained by payment of a biennial fee of not less than five nor more than fifty dollars as determined by the examining board. Holders of inactive certificates of registration shall not be required to complete professional development as required in subsection (1) of this section. Holders of inactive certificates shall not practice land surveying. If the examining board determines that an inactive registrant has actively practiced land surveying, the examining board may immediately revoke his or her certificate of registration.

(4) A holder of an inactive certificate of registration may return his or her certificate to an active registration to practice land surveying by the applicant electing to either:

(a) Complete one and one-half the biennial requirement for professional development. Such requirement shall be satisfied as set forth in the rules or bylaws; or

(b) Take such examination as the examining board deems necessary to determine his or her qualifications. Such examination shall cover areas designed to demonstrate the applicant's proficiency in current methods of land surveying practice.

Additionally he or she shall pay the biennial fee as required in section 81-8,118.

**Source:** Laws 1984, LB 478, § 6; Laws 1985, LB 564, § 2; Laws 1986, LB 621, § 2; Laws 1994, LB 874, § 17; Laws 2015, LB138, § 12.

**81-8,120 Land surveying; nonresident; registration; fee; service of process.**

A nonresident of this state who is registered as a land surveyor in another state may be registered under the Land Surveyors Regulation Act by filing an application with the secretary of the examining board and making payment to the examining board of a fee in the sum of not less than twenty-five dollars and not more than one hundred fifty dollars as set forth in the rules or bylaws. The applicant shall be required to take such examinations as the examining board deems necessary to determine his or her qualifications, but in any event he or she shall be required to pass an examination of not less than four hours' duration which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state. Before a nonresident of this state is registered under the Land Surveyors Regulation Act, he or she shall first file a written consent that actions and suits at law may be commenced against him or her in any county of this state in which any cause of action may arise because of any survey commenced or conducted by such nonresident surveyor or his or her agent or employees in such county.

**Source:** Laws 1957, c. 383, § 13, p. 1336; Laws 1971, LB 442, § 23; Laws 1983, LB 447, § 97; Laws 1985, LB 564, § 3; Laws 1994, LB 874, § 19; Laws 2013, LB303, § 4; Laws 2015, LB138, § 13.

**81-8,122.01 Land survey; filing; contents.**

Whenever a survey has been executed by a land surveyor who is registered under the Land Surveyors Regulation Act, a record of such survey bearing the signature and seal of the land surveyor shall be filed in the survey record repository established pursuant to section 84-412 if such survey meets applicable regulations. Surveys which are within the corporate limits of a city with a population in excess of fifteen thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and do not reference, recover, retrace, or reestablish the original government corners or lines or do not create a new subdivision are not required to be filed in the survey record repository but shall be filed in the county surveyor's office in the county where the land is located if they meet applicable regulations. If no regular office is maintained in the county courthouse for the county surveyor, it shall be filed in the survey record repository. The record of survey shall be filed within ninety days after the completion of the survey, or within any extension of time granted by the office in which it is required to be filed for reasonable cause, and shall consist of the following minimum data: (1) Plat of the tract surveyed; (2) legal description of

the tract surveyed; (3) description of all corners found; (4) description of all corners set; (5) ties to any section corners, quarter corners, or quarter-quarter corners found or set; (6) plat or record distances as well as field measurements; and (7) date of completion of survey. The record of survey so filed shall become an official record of survey, and shall be presumptive evidence of the facts stated therein, unless the land surveyor filing the survey shall be interested in the same. Plats or maps which are prepared only for the purpose of showing the location of improvements on existing lots, which are not represented as surveys or land surveys and no corners are established or reestablished, shall be specifically exempt from all requirements of this section.

**Source:** Laws 1969, c. 764, § 1, p. 2893; Laws 1982, LB 127, § 11; Laws 2015, LB138, § 14; Laws 2017, LB113, § 56.

**81-8,123 Land surveyor; complaint; probation, suspension, or revocation of registration; grounds.**

The examining board may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any land surveyor. It shall have the power to place any land surveyor on probation or to revoke or suspend any registration under the Land Surveyors Regulation Act when the land surveyor has been found guilty of any of the following practices: (1) Fraud or deceit in obtaining a registration; (2) negligence or incompetency in the performance of his or her duties; or (3) misconduct in the performance of his or her duties.

**Source:** Laws 1957, c. 383, § 16, p. 1337; Laws 1984, LB 478, § 5; Laws 1994, LB 874, § 22; Laws 2015, LB138, § 15.

**81-8,126 Act; applicability.**

The Land Surveyors Regulation Act shall not apply to (1) any land surveyor working for the United States Government while performing his or her duties as an employee of the government, (2) any person employed as an assistant to a land surveyor registered under the act, or (3) any professional engineer or person working under the direct supervision of a professional engineer licensed under the Engineers and Architects Regulation Act doing work which does not involve the location, description, establishment, or reestablishment of property corners or property lines or work which does not create descriptions, definitions, or areas for transfer of an estate in real property.

**Source:** Laws 1957, c. 383, § 19, p. 1338; Laws 1989, LB 263, § 2; Laws 1997, LB 622, § 118; Laws 2015, LB138, § 16.

**Cross References**

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

**81-8,127 Land surveying; unlawful practice or use of title; penalty.**

Any person, firm, partnership, limited liability company, corporation, or joint-stock association who or which practices or offers to practice land surveying or uses the title of land surveyor in this state without being registered or any person not registered under the Land Surveyors Regulation Act who



fails to file a copy of the plat and field notes as provided in section 81-8,122 shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1957, c. 383, § 20, p. 1338; Laws 1977, LB 39, § 297; Laws 1993, LB 690, § 2; Laws 1994, LB 884, § 93; Laws 2015, LB138, § 17.

(j) STATE ATHLETIC COMMISSIONER

**81-8,129 State Athletic Commissioner; jurisdiction; activities covered.**

The State Athletic Commissioner shall have sole direction, management, control, and jurisdiction over all professional mixed martial arts, professional boxing, and professional sparring matches and exhibitions and all amateur mixed martial arts matches and exhibitions to be held within the state, except such as are conducted by universities, colleges, high schools, the military, and recognized amateur associations for contestants under sixteen years of age. No professional boxers, professional mixed martial arts contestants, or amateur mixed martial arts contestants who have attained the age of sixteen, shall participate in a match or exhibition for a prize or purse, or at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, in this state except by a club, association, organization, or person licensed by the commissioner, as provided in section 81-8,130, and in pursuance of a license granted by the commissioner for such match or exhibition under section 81-8,130.01.

**Source:** Laws 1957, c. 382, § 2, p. 1327; Laws 1980, LB 849, § 2; Laws 2007, LB471, § 1; Laws 2012, LB869, § 1; Laws 2015, LB291, § 1.

**81-8,130.01 Professional matches; promoters; licenses and permits; fee.**

Licenses and permits may be issued to professional mixed martial arts or professional boxing promoters, whether persons, clubs, or associations, for the sole purpose of conducting professional matches under such rules and regulations as the State Athletic Commissioner shall adopt. Each application for such license shall be accompanied by a fee set by the commissioner in rule and regulation. Such fee shall be not less than one hundred dollars and not more than three hundred dollars. If the promoter is an individual, the application shall include his or her social security number.

**Source:** Laws 1980, LB 849, § 17; Laws 1997, LB 752, § 222; Laws 2002, LB 482, § 2; Laws 2007, LB471, § 2; Laws 2012, LB869, § 3; Laws 2015, LB291, § 2.

**81-8,132 Licensee; bond; conditions.**

No license shall be granted unless the licensee has executed a bond in the sum of not less than one thousand dollars in the case of amateur mixed martial arts, nor less than five thousand dollars in the case of professional mixed martial arts or professional boxing. The license shall be approved by the State Athletic Commissioner, conditioned on the faithful compliance by the licensee with the provisions of sections 81-8,129 to 81-8,142.01, the rules and regula-

tions of the commissioner, and such other laws of the state as may be applicable to anything done by the licensee in pursuance of the license.

**Source:** Laws 1957, c. 382, § 5, p. 1328; Laws 1980, LB 849, § 5; Laws 2007, LB471, § 3; Laws 2012, LB869, § 4; Laws 2015, LB291, § 3.

**81-8,133 Referees; license; duties; fee.**

The State Athletic Commissioner is authorized to grant licenses to competent referees, upon an application and the payment of a fee set by the commissioner in rule and regulation. Such fee shall be not less than ten dollars and not more than forty dollars per annum. The commissioner may revoke any license so granted for such cause as may be deemed sufficient. At every professional boxing, professional mixed martial arts, amateur mixed martial arts, or professional sparring match or exhibition, there shall be in attendance a duly licensed referee, who shall direct and control the match. The referee shall stop the match whenever he or she deems it advisable, (1) because of the physical condition of the contestants or one of them, (2) when one of the contestants is clearly outclassed by his or her opponent, or (3) for any other sufficient reason. The referee shall, at the termination of every professional boxing, professional mixed martial arts, amateur mixed martial arts, or professional sparring match or exhibition, indicate a winner. The fees of the referee and other licensed officials may be fixed by the commissioner and shall be paid by the licensed organization.

**Source:** Laws 1957, c. 382, § 6, p. 1328; Laws 1980, LB 849, § 6; Laws 2002, LB 482, § 3; Laws 2007, LB471, § 4; Laws 2012, LB869, § 5; Laws 2015, LB291, § 4.

**81-8,133.01 Other officials and contestants; license required; fees; revocation of license.**

The State Athletic Commissioner may grant licenses to qualified physicians, managers, matchmakers, and professional mixed martial arts, professional boxing, or professional sparring match or exhibition judges upon an application and payment of an annual fee set by the commissioner in rule and regulation. Such fee for matchmakers shall be not less than ten dollars and not more than one hundred dollars. Such fee for physicians, managers, and professional mixed martial arts, professional boxing, or professional sparring match or exhibition judges shall be not less than ten dollars and not more than twenty dollars. The commissioner may also grant licenses to qualified timekeepers, contestants, and seconds upon an application and payment of an annual fee set by the commissioner in rule and regulation. Such fee shall be not less than ten dollars and not more than twenty dollars. The application shall include the applicant's social security number. No person shall serve as physician, manager, matchmaker, or judge at any professional mixed martial arts, professional boxing, or professional sparring match or exhibition who is not licensed as such. No person shall serve as timekeeper or contestant at any professional mixed martial arts or professional boxing match who is not licensed as such. The commissioner shall have summary authority to stop any match at which

any person is serving in violation of the provisions of this section. Any license granted under the provisions of this section may be revoked for cause.

**Source:** Laws 1963, c. 501, § 1, p. 1604; Laws 1980, LB 849, § 7; Laws 1984, LB 980, § 1; Laws 1997, LB 752, § 223; Laws 2002, LB 482, § 4; Laws 2007, LB471, § 5; Laws 2012, LB869, § 6; Laws 2015, LB291, § 5.

**81-8,135 Licensee; reports; contents; gross receipts tax; amounts.**

Every licensee conducting or holding any professional mixed martial arts, amateur mixed martial arts, or professional boxing match shall furnish to the State Athletic Commissioner a written report showing the articles of agreement between the contestants, the number of tickets sold for each contest, the amount of the gross receipts thereof, the gross receipts from sale of any television rights, and such other matters as the commissioner shall prescribe. Within such time the licensee shall pay to the commissioner a tax of five percent of the total gross receipts of any professional mixed martial arts or professional boxing match or exhibition, exclusive of state and federal taxes, except the gross receipts from sale of television rights, and five percent of such rights, and five percent of the total gross receipts of any amateur mixed martial arts match or exhibition, exclusive of state and federal taxes, except that if such match or exhibition is conducted as an incidental feature in any event or entertainment of a different character, such portion of the total receipts shall be paid to the state as the commissioner may determine, or as may be fixed by rule adopted under section 81-8,139.

**Source:** Laws 1957, c. 382, § 8, p. 1329; Laws 1961, c. 434, § 1, p. 1349; Laws 1963, c. 520, § 1, p. 1638; Laws 1969, c. 778, § 4, p. 2951; Laws 1980, LB 849, § 9; Laws 2007, LB471, § 7; Laws 2012, LB869, § 8; Laws 2015, LB291, § 6.

**81-8,139 State Athletic Commissioner; rules and regulations; powers; suspension of contestant from competition; fine; hearing; notice.**

(1) Except as provided in subsection (2) of this section, the State Athletic Commissioner shall adopt and promulgate such rules and regulations for the administration and enforcement of sections 81-8,128 to 81-8,142.01 as he or she may deem necessary. Such rules and regulations shall include, but not be limited to, the establishment of written criteria for the granting and revoking of licenses, the setting of license fees, and the qualification requirements for those to be licensed as referees, physicians, managers, matchmakers, and professional boxing, professional mixed martial arts, or professional sparring match or exhibition judges. He or she shall have the power and may control and limit the number of professional mixed martial arts, amateur mixed martial arts, professional boxing, or professional sparring matches or exhibitions given, or to be held, each year, or within one week, in any city or town, or by any organization. He or she may fine any licensee, except amateur contestants, an amount not to exceed one thousand dollars and may suspend for a period, not to exceed one year, any licensee's right to participate in or conduct any match or exhibition for unsportsmanlike conduct while engaged in or arising directly from any match or exhibition, failure to compete in good faith, engaging in any sham match or exhibition, or the use of threatening and abusive language toward officials, other contestants, or spectators.

(2) The State Athletic Commissioner may adopt and promulgate rules and regulations to identify a list of substances banned for use by any amateur or professional contestant and may require any contestant to submit to a test for banned substances as a condition for allowing the contestant's participation in a match or exhibition.

(3) The State Athletic Commissioner may suspend an amateur or professional contestant from competition for a period not to exceed one year and may fine a professional contestant an amount not to exceed one thousand five hundred dollars or forty percent of the prize or purse, whichever is greater, for a first offense of failing a test for a banned substance on the list developed pursuant to subsection (2) of this section or for refusing to submit to such a test. He or she may suspend an amateur or professional contestant from competition for a period not to exceed three years and may fine a professional contestant an amount not to exceed three thousand dollars or seventy percent of the prize or purse, whichever is greater, for any second such offense. He or she may suspend an amateur or professional contestant from competition for life and may fine a professional contestant an amount not to exceed five thousand dollars or one hundred percent of the prize or purse, whichever is greater, for any third or subsequent such offense. For purposes of determining if an offense under this subsection is a first, second, third, or subsequent offense, failing a test for banned substances and refusing to submit to such a test shall be considered the same offense.

(4) Before levying an administrative fine pursuant to this section, the State Athletic Commissioner shall set the matter for hearing. Proceedings to levy an administrative fine shall be contested cases prosecuted and appealable pursuant to the Administrative Procedure Act. At least ten days before the hearing, the State Athletic Commissioner shall serve notice of the time, date, and place of the hearing upon the licensee or other violator by personal or certified mail service.

(5) The State Athletic Commissioner shall remit any administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1957, c. 382, § 12, p. 1330; Laws 1975, LB 5, § 1; Laws 1980, LB 849, § 13; Laws 2002, LB 482, § 5; Laws 2007, LB471, § 9; Laws 2012, LB869, § 10; Laws 2015, LB291, § 7; Laws 2016, LB823, § 1.

#### Cross References

Administrative Procedure Act, see section 84-920.

### (p) TORT CLAIMS, STATE CLAIMS BOARD, AND RISK MANAGEMENT PROGRAM

#### **81-8,211 Risk Manager; State Claims Board; authority; procedure; fees.**

Authority is hereby conferred upon the Risk Manager and State Claims Board, acting on behalf of the State of Nebraska, to consider, ascertain, adjust, compromise, settle, determine, and allow any tort claim. Any claimant dissatisfied with a decision of the Risk Manager may make application for review of the decision by the State Claims Board by filing an application for review with the Risk Manager within sixty days after receipt of notice of the Risk Manager's decision. If any tort claim is compromised, settled, or allowed in an amount of

more than five thousand dollars, the approval of the State Claims Board is required. If any tort claim is compromised, settled, or allowed in an amount of more than ten thousand dollars, the unanimous approval of all members of the State Claims Board shall be required. If any tort claim is compromised, settled, or allowed in an amount of more than twenty-five thousand dollars, the claim shall also be submitted for approval by the district court for Lancaster County. When approval of the district court is required, the Attorney General shall make application for such approval and shall file with the application a transcript of the action of the State Claims Board on such claim. The claimant may join in such application, and if the claimant does so, the court may proceed to act on the application without further notice to either party. If the claimant does not join in the application, the court shall require actual notice to all parties before acting on the application. The court may deny the application for any legal and sufficient reason or may direct the State Claims Board to conduct further hearings on any material issues. The fees of the clerk of the district court for filing such application shall be five dollars.

**Source:** Laws 1969, c. 756, § 3, p. 2846; Laws 1984, LB 1028, § 1; Laws 1988, LB 864, § 21; Laws 2005, LB 485, § 1; Laws 2008, LB821, § 2; Laws 2018, LB193, § 91.  
Operative date July 19, 2018.

**81-8,219 State Tort Claims Act; claims exempt.**

The State Tort Claims Act shall not apply to:

(1) Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute, rule, or regulation, whether or not such statute, rule, or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion is abused;

(2) Any claim arising with respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer;

(3) Any claim for damages caused by the imposition or establishment of a quarantine by the state whether such quarantine relates to persons or property;

(4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contract rights;

(5) Any claim arising out of misrepresentation or deceit, except that, in cases of adoption or placement, the State Tort Claims Act shall apply to a claim arising out of misrepresentation or deceit by the Department of Health and Human Services in failing to warn, notify, or inform of a ward's mental and behavioral health history, educational history, and medical history, including any history as a victim or perpetrator of sexual abuse;

(6) Any claim by an employee of the state which is covered by the Nebraska Workers' Compensation Act;

(7) Any claim based on activities of the Nebraska National Guard when such claim is cognizable under the Federal Tort Claims Act, 28 U.S.C. 2674, or the federal National Guard Claims Act, 32 U.S.C. 715, or when such claim accrues

as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(8) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to the state to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the state had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(9) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Such claim shall also not be filed against a state employee acting within the scope of his or her office. Nothing in this subdivision shall be construed to limit the state's liability for any claim based upon the negligent execution by a state employee in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act except when such title is issued upon an application filed electronically by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507;

(10) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any governmental entity in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;

(11) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other state-owned public place due to weather conditions. Nothing in this subdivision shall be construed to limit the state's liability for any claim arising out of the operation of a motor vehicle by an employee of the state while acting within the course and scope of his or her employment by the state;

(12) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval;

(13) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. The state shall be deemed to waive its immunity for a claim due to a spot or localized defect only if the state has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim;

(14)(a) Any claim relating to recreational activities on property leased, owned, or controlled by the state for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or

localized defect of the premises unless the spot or localized defect is not corrected within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, the state shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the state only to the extent the state retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (8) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the state and used for recreational activities; or

(15) Any claim arising as a result of a special event during a period of time specified in a notice provided by a political subdivision pursuant to subsection (3) of section 39-1359.

**Source:** Laws 1969, c. 756, § 11, p. 2848; Laws 1971, LB 28, § 5; Laws 1986, LB 811, § 142; Laws 1988, LB 864, § 30; Laws 1992, LB 262, § 11; Laws 1993, LB 370, § 482; Laws 1993, LB 170, § 9; Laws 1999, LB 228, § 2; Laws 2004, LB 560, § 44; Laws 2005, LB 276, § 111; Laws 2007, LB564, § 4; Laws 2011, LB589, § 5; Laws 2017, LB263, § 99; Laws 2018, LB729, § 1.  
Effective date July 19, 2018.

#### Cross References

**Motor Vehicle Certificate of Title Act**, see section 60-101.

**Nebraska Workers' Compensation Act**, see section 48-1,110.

**State Boat Act**, see section 37-1201.

**81-8,236 Correctional institution incident; costs of prosecution; claim by county; Risk Manager; powers and duties.**

(1) For purposes of this section:

(a) Correctional institution incident means an incident in which a crime or crimes are allegedly committed by one or more inmates confined in a state correctional institution;

(b) Costs of prosecution includes, but is not limited to, the costs of defense for indigent defendants, including attorney's fees and expert witness fees;

(c) Division means the risk management and state claims division of the Department of Administrative Services; and

(d) Threshold amount means the amount of property tax revenue raised by a county from a levy of two and one-half cents per one hundred dollars of taxable valuation of property subject to the levy. The threshold amount shall be determined using valuations for the year in which the correctional institution incident occurred.

(2) A county may file a claim with the division to recover the costs of prosecution relating to a correctional institution incident that occurs within the county. The county may recover only those costs that exceed the threshold amount for such county.

(3) The Risk Manager shall have the power and authority to receive claims, investigate claims, and otherwise carry out the responsibilities of this section. The division shall develop a claim form, publish claim procedures, and determine the supporting information required to perfect a claim.

(4) The Risk Manager shall submit claims received under this section to the Legislature in the same manner as provided in the State Miscellaneous Claims Act. The Legislature shall review the claim and make an appropriation for the claim if appropriate.

(5) This section shall apply to any correctional institution incident occurring on or after May 1, 2015. Claims described in this section shall have no time bar to recovery.

**Source:** Laws 2018, LB861, § 1.  
Effective date July 19, 2018.

#### Cross References

State Miscellaneous Claims Act, see section 81-8,294.

### **81-8,239.03 Risk Manager; present budget request; contents; deficiency appropriation; procedure; investment.**

The Risk Manager shall present a budget request as provided in subdivision (1) of section 81-1113 for the Risk Management Program which shall separately state the amount requested for the Tort Claims Fund, State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, and Workers' Compensation Claims Revolving Fund, and such budget shall be based on the projected needs for such funds. If the Risk Manager does not assess state agencies for any of the funds listed in this section, the amount of expenditures paid from the fund on behalf of any non-general-fund agency shall be separately stated and paid into the funds from an appropriation to such non-general-fund agency. If the amount of money in any of such funds is not sufficient to pay any awards or judgments authorized by sections 48-192 to 48-1,109 or the State Tort Claims Act, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in such funds 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 1981, LB 273, § 25; Laws 1986, LB 811, § 145; Laws 1988, LB 864, § 57; Laws 1994, LB 1211, § 5; Laws 1995, LB 7, § 112; Laws 2007, LB256, § 9; Laws 2016, LB1092, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

State Tort Claims Act, see section 81-8,235.

(q) PUBLIC COUNSEL

**81-8,241 Public Counsel; established; powers and duties; appointment.**

The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254, the Office of Inspector General of Nebraska Child Welfare Act, and the Office of Inspector General of the Nebraska Correctional System Act. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

**Source:** Laws 1969, c. 762, § 2, p. 2879; Laws 2012, LB821, § 42; Laws 2015, LB598, § 19.

**Cross References**

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

Office of Inspector General of the Nebraska Correctional System Act, see section 47-901.

**81-8,244 Public Counsel; personnel; appointment; compensation; authority; appoint Inspector General of Nebraska Child Welfare; appoint Inspector General of the Nebraska Correctional System.**

(1)(a) The Public Counsel may select, appoint, and compensate as he or she sees fit, within the amount available by appropriation, such assistants and employees as he or she deems necessary to discharge the responsibilities under sections 81-8,240 to 81-8,254. He or she shall appoint and designate one assistant to be a deputy public counsel, one assistant to be a deputy public counsel for corrections, one assistant to be a deputy public counsel for institutions, and one assistant to be a deputy public counsel for welfare services.

(b) Such deputy public counsels shall be subject to the control and supervision of the Public Counsel.

(c) The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services and all county or municipal correctional or jail facilities.

(d) The authority of the deputy public counsel for institutions shall extend to all mental health and veterans institutions and facilities operated by the Department of Health and Human Services and to all regional behavioral health authorities that provide services and all community-based behavioral health services providers that contract with a regional behavioral health authority to provide services, for any individual who was a patient within the prior twelve months of a state-owned and state-operated regional center, and to all complaints pertaining to administrative acts of the department, authority, or

provider when those acts are concerned with the rights and interests of individuals placed within those institutions and facilities or receiving community-based behavioral health services.

(e) The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska.

(f) The Public Counsel may delegate to members of the staff any authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

(2) The Public Counsel shall appoint the Inspector General of Nebraska Child Welfare as provided in section 43-4317. The Inspector General of Nebraska Child Welfare shall have the powers and duties provided in the Office of Inspector General of Nebraska Child Welfare Act.

(3) The Public Counsel shall appoint the Inspector General of the Nebraska Correctional System as provided in section 47-904. The Inspector General of the Nebraska Correctional System shall have the powers and duties provided in the Office of Inspector General of the Nebraska Correctional System Act.

**Source:** Laws 1969, c. 762, § 5, p. 2880; Laws 1976, LB 687, § 1; Laws 1994, LB 1224, § 87; Laws 2008, LB467, § 2; Laws 2012, LB821, § 43; Laws 2015, LB598, § 20.

#### Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

Office of Inspector General of the Nebraska Correctional System Act, see section 47-901.

### **81-8,245 Public Counsel; powers; enumerated.**

The Public Counsel shall have the power to:

(1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;

(2) Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals;

(3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;

(4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;

(5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and

travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned;

(6) Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies;

(7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act;

(8) Carry out his or her duties under the Office of Inspector General of Nebraska Child Welfare Act. If any of the provisions of sections 81-8,240 to 81-8,254 conflict with provisions of the Office of Inspector General of Nebraska Child Welfare Act, the provisions of such act shall control;

(9) Carry out his or her duties under the Office of Inspector General of the Nebraska Correctional System Act. If any of the provisions of sections 81-8,240 to 81-8,254 conflict with the provisions of the Office of Inspector General of the Nebraska Correctional System Act, the provisions of such act shall control;

(10) Investigate allegations of violation of subsection (2) of section 84-908 by an administrative agency pursuant to a complaint made to his or her office and make a determination as to whether such administrative agency has violated such subsection. The Public Counsel shall report his or her determination in writing to the Governor, the Secretary of State, the Attorney General, the Executive Board of the Legislative Council, and the director or chief executive officer of the agency. The report to the executive board shall be submitted electronically; and

(11) Investigate and address the complaint and case of:

(a) Any juvenile committed to the custody of a youth rehabilitation and treatment center; and

(b) Any juvenile released from a youth rehabilitation and treatment center for reentry into the community, while that juvenile is subject to the Community and Family Reentry Process and a service or treatment program in which the juvenile may be involved after his or her release from a youth rehabilitation and treatment center, whether that service or program is administrated by the Office of Juvenile Services or a private provider in the community. The Office of Juvenile Services and private providers in the community shall cooperate with any investigation conducted by the Public Counsel pursuant to this subdivision and provide all documentation and information requested by the Public Counsel in connection with such an investigation.

**Source:** Laws 1969, c. 762, § 6, p. 2880; Laws 1976, LB 687, § 2; Laws 1993, LB 44, § 11; Laws 2012, LB821, § 44; Laws 2013, LB242, § 1; Laws 2013, LB561, § 62; Laws 2015, LB598, § 21.

#### Cross References

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

Office of Inspector General of the Nebraska Correctional System Act, see section 47-901.

State Government Effectiveness Act, see section 81-2701.

### (y) NEBRASKA SESQUICENTENNIAL COMMISSION

#### **81-8,310 Nebraska Sesquicentennial Commission; duties; powers; report.**

(1) The Nebraska Sesquicentennial Commission shall develop programs and plans for official observance of the one hundred fiftieth anniversary of Nebras-

ka statehood in 2017. The commission shall work closely with various state agencies, boards, commissions, and political subdivisions, including the State Department of Education, the Department of Transportation, the Nebraska State Historical Society, the Nebraska State Fair Board, the Game and Parks Commission, and the Nebraska Tourism Commission, to execute commemorative events and to implement educational activities with emphasis on events and activities that promote Nebraska and its economy by focusing on the state's history, cultural diversity, and unique geography. The commission may also seek the guidance and support of any other groups or organizations the commission deems necessary or helpful in fulfilling its purpose.

(2) The commission may employ personnel, contract for services, and receive, expend, and allocate gifts, grants, and donations to aid in the performance of its duties. The commission is empowered to expend and allocate any appropriations authorized by the Legislature to carry out the purposes of sections 81-8,309 and 81-8,310.

(3) The commission shall expend and allocate at least five percent of the money in the Nebraska 150 Sesquicentennial Plate Proceeds Fund on January 1, 2017, for awarding one or more grants to any person who applies to the commission for support for a local sesquicentennial event or project according to standards and guidelines determined by the commission.

(4) The commission shall report electronically to the Legislature on or before July 1 in 2016, 2017, and 2018 detailing the expenditures made from the fund pursuant to this section.

**Source:** Laws 2014, LB744, § 2; Laws 2015, LB220, § 10; Laws 2017, LB339, § 282.

## ARTICLE 9

### STATE COOPERATION WITH FEDERAL GOVERNMENT

#### Section

- 81-916. Property and assets relating to surplus and excess property programs; transferred to Department of Correctional Services; when.
- 81-917. Surplus and excess property program; employees of Department of Transportation; transferred to Department of Correctional Services; conditions; benefits.

#### **81-916 Property and assets relating to surplus and excess property programs; transferred to Department of Correctional Services; when.**

Effective July 1, 1982, all property, assets, and liabilities relating to those federal surplus and excess property programs which are consolidated by Public Law 94-519 and operated by the Department of Transportation shall be transferred to the Department of Correctional Services.

**Source:** Laws 1977, LB 548, § 4; Laws 1981, LB 536, § 4; Laws 1982, LB 767, § 4; Laws 2017, LB339, § 283.

#### **81-917 Surplus and excess property program; employees of Department of Transportation; transferred to Department of Correctional Services; conditions; benefits.**

All employees employed in those federal surplus and excess property programs which are consolidated by Public Law 94-519 and have been transferred to the Department of Transportation may be transferred to the Department of

Correctional Services. All employees so transferred shall be: (1) Employed under and compensated through the State Personnel System; and (2) considered as new employees solely for purposes of performance evaluation and subject to all applicable policies and procedures for such transfer. All employees so transferred shall keep all accrued benefits such as sick leave, vacation leave, and retirement benefits after such transfer has been completed.

**Source:** Laws 1977, LB 548, § 11; Laws 1981, LB 536, § 5; Laws 1982, LB 767, § 5; Laws 2017, LB339, § 284.

## ARTICLE 11

### DEPARTMENT OF ADMINISTRATIVE SERVICES

#### (a) GENERAL PROVISIONS

##### Section

- 81-1108.05. Shared Services Revolving Fund; created; use; investment.
- 81-1108.15. State building division; functions and responsibilities; facilities planning, construction, and administration.
- 81-1108.22. State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed; administrator; duties; State Building Revolving Fund; created; use; investment; applicability of section, when.
- 81-1108.43. Capital construction project; prohibited acts; exceptions; warrant; when issued.
- 81-1110.07. Accounting Division Cash Fund; created; use; investment.
- 81-1113. Budget division; powers; duties.
- 81-1113.01. State budgets; department and agency budget requests; budget forms and instructions; when distributed; additional forms.
- 81-1114. Department of Administrative Services; building division; powers, duties, and responsibilities.
- 81-1118. Materiel division; established; duties; administrator; branches; established.
- 81-1119. Real property; purchases authorized.
- 81-1120.22. Director of Communications; develop system of billings and charges; payment; deposit.
- 81-1120.23. Repealed. Laws 2017, LB3, § 3.
- 81-1121. Warrants; preparation and issuance; funds transfer systems; payment by mistake; adjustment.
- 81-1126. Repealed. Laws 2016, LB978, § 5.
- 81-1127. Repealed. Laws 2016, LB978, § 5.
- 81-1128. Repealed. Laws 2016, LB978, § 5.
- 81-1129. Repealed. Laws 2016, LB978, § 5.

#### (f) STATE GOVERNMENT RECYCLING MANAGEMENT ACT

- 81-1185. State government recyclable material, defined.

#### (a) GENERAL PROVISIONS

##### **81-1108.05 Shared Services Revolving Fund; created; use; investment.**

There is hereby created the Shared Services Revolving Fund. The fund shall be administered by the Department of Administrative Services. The fund shall consist of money received from state agencies, boards, commissions, political subdivisions, and other governmental entities for shared services provided by the department. Shared services include, but are not limited to, human resource management including payroll processing, process improvement projects, and financial services. Billings for shared services shall be adequate to cover actual and necessary expenses associated with providing these services. The fund shall be used to pay for the administrative expenses incurred by the

department to provide such 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 2017, LB331, § 12.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1108.15 State building division; functions and responsibilities; facilities planning, construction, and administration.**

(1) Except as provided in the Nebraska State Capitol Preservation and Restoration Act, the division shall have the primary functions and responsibilities of statewide facilities planning, facilities construction, and facilities administration and shall adopt and promulgate rules and regulations to carry out this section.

(2) Facilities planning shall include the following responsibilities and duties:

(a) To maintain utilization records of all state-owned, state-occupied, and vacant facilities;

(b) To coordinate comprehensive capital facilities planning;

(c) To define and review program statements based on space utilization standards;

(d) To prepare or review planning and construction documents;

(e) To develop and maintain time-cost schedules for capital construction projects;

(f) To assist the Governor and the Legislative Fiscal Analyst in the preparation of the capital construction budget recommendations;

(g) To maintain a complete inventory of all state-owned, state-occupied, and vacant sites and structures and to review the proposals for naming such sites and structures;

(h) To determine space needs of all state agencies and establish space-allocation standards; and

(i) To cause a state comprehensive capital facilities plan to be developed.

(3) Facilities construction shall include the following powers and duties:

(a) To maintain close contact with and conduct inspections of each project so as to assure execution of time-cost schedules and efficient contract performance if such project's total design and construction cost is equal to or greater than the project cost set by subdivision (1)(a) of section 81-1108.43 as adjusted by subsection (2) of section 81-1108.43;

(b) To perform final acceptance inspections and evaluations; and

(c) To coordinate all change or modification orders and progress payment orders.

(4) Facilities administration shall include the following powers and duties:

(a) To serve as state leasing administrator or agent for all facilities to be leased for use by the state and for all state-owned facilities to be rented to state agencies or other parties subject to section 81-1108.22. The division shall remit the proceeds from any rentals of state-owned facilities to the State Treasurer for

credit to the State Building Revolving Fund and the State Building Renewal Assessment Fund;

(b) To provide all maintenance, repairs, custodial duties, security, and administration for all buildings and grounds owned or leased by the State of Nebraska except as provided in subsections (5) and (6) of this section;

(c) To be responsible for adequate parking and the designation of parking stalls or spaces, including access aisles, in offstreet parking facilities for the exclusive use of handicapped or disabled or temporarily handicapped or disabled persons pursuant to section 18-1737;

(d) To ensure that all state-owned, state-occupied, and vacant facilities are maintained or utilized to their maximum capacity or to dispose of such facilities through lease, sale, or demolition;

(e) To submit electronically an annual report to the Appropriations Committee of the Legislature and the Committee on Building Maintenance regarding the amount of property leased by the state and the availability of state-owned property for the needs of state agencies;

(f) To report monthly time-cost data on projects to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(g) To administer the State Emergency Capital Construction Contingency Fund;

(h) To submit status reports to the Governor and the Legislative Fiscal Analyst after each quarter of a construction project is completed detailing change orders and expenditures to date. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. Such reports shall be required on all projects costing an amount equal to or greater than the amount set forth in subdivision (1)(a) of section 81-1108.43 as adjusted by subsection (2) of section 81-1108.43 and on such other projects as may be designated by the division; and

(i) To submit a final report on each project to the Governor and the Legislative Fiscal Analyst. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. Such report shall include, but not be limited to, a comparison of final costs and appropriations made for the project, change orders, and modifications and whether the construction complied with the related approved program statement. Such reports shall be required on all projects costing an amount equal to or greater than the amount set forth in subdivision (1)(a) of section 81-1108.43 as adjusted by subsection (2) of section 81-1108.43 and on such other projects as may be designated by the division.

(5) Subdivisions (4)(b), (c), and (d) of this section shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Transportation, and the Board of Educational Lands and Funds, (b) buildings and grounds owned or leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) buildings and grounds owned, leased, or operated by the Department of Correctional Services, (d) facilities to be leased for nonoffice use by the Department of Transportation, (e) buildings or grounds owned or leased by the Game and Parks Commission if the application of such subdivisions to the buildings or grounds would result in ineligibility for or repayment of federal funding, (f) buildings or

grounds of the state park system, state recreation areas, state historical parks, state wildlife management areas, or state recreational trails, or (g) other buildings or grounds owned or leased by the State of Nebraska which are specifically exempted by the division because the application of such subdivisions would result in the ineligibility for federal funding or would result in hardship on an agency, board, or commission due to other exceptional or unusual circumstances, except that nothing in this subdivision shall prohibit the assessment of building rental depreciation charges to tenants of facilities owned by the state and under the direct control and maintenance of the division.

(6) Security for all buildings and grounds owned or leased by the State of Nebraska in Lincoln, Nebraska, except the buildings and grounds described in subsection (5) of this section, shall be the responsibility of the Nebraska State Patrol. The Nebraska State Patrol shall consult with the Governor, the Chief Justice, the Executive Board of the Legislative Council, and the State Capitol Administrator regarding security policy within the State Capitol and capitol grounds.

(7) Each member of the Legislature shall receive an electronic copy of the reports required by subdivisions (4)(f), (h), and (i) of this section by making a request for them to the State Building Administrator. The information on such reports shall be submitted to the division by the agency responsible for the project.

**Source:** Laws 1974, LB 1048, § 6; Laws 1976, LB 1006, § 9; Laws 1979, LB 322, § 47; Laws 1981, LB 381, § 19; Laws 1987, LB 32, § 2; Laws 1992, LB 1241, § 21; Laws 1995, LB 530, § 5; Laws 1998, LB 299, § 4; Laws 2000, LB 1216, § 25; Laws 2001, LB 666, § 2; Laws 2001, LB 809, § 10; Laws 2004, LB 439, § 18; Laws 2004, LB 1092, § 8; Laws 2012, LB782, § 180; Laws 2016, LB978, § 2; Laws 2017, LB320, § 4; Laws 2017, LB339, § 285.

#### Cross References

Nebraska State Capitol Preservation and Restoration Act, see section 72-2201.

**81-1108.22 State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed; administrator; duties; State Building Revolving Fund; created; use; investment; applicability of section, when.**

(1) The division shall have the responsibility of providing office space in leased and state-owned buildings in the proximity of the State Capitol and in other locations.

(2) When any board, agency, commission, or department of the state government not otherwise specifically authorized by law desires to use funds available for the purpose of renting office space outside of the State Capitol, it shall submit a request to the Director of Administrative Services. If the director approves the lease, the terms and location shall be approved by the director and the administrator in writing and the leases shall be entered into and administered by the administrator on behalf of the board, agency, commission, or department. A copy of all such lease contracts shall be kept on file by the state building division and shall be open to inspection by the Legislature and the public during normal business hours.

(3)(a) The administrator shall develop a system of charges to cover basic rental, maintenance, renovations, and operation of such leased and owned



properties. The charges to state agencies, boards, commissions, or departments of state government shall be paid from funds available for the purpose of renting space on a regular basis and placed, as applicable, in the State Building Revolving Fund and the State Building Renewal Assessment Fund. The administrator shall make payments for basic rentals, renovations, and maintenance and operational costs of all leased and owned buildings from the State Building Revolving Fund except for expenses relating to security provided by the Nebraska State Patrol as provided in subdivision (b) of this subsection.

(b) The State Building Revolving Fund is created. The fund shall be administered by the administrator. The fund shall consist of rental charges and other receipts collected pursuant to contractual agreements between the state building division and other entities as authorized by law. The fund shall only be used to support the operation of the state building division as provided by law, except that the Legislature shall make fund transfers each fiscal year through the budget process from the State Building Revolving Fund to the Capitol Security Revolving Fund to help pay non-general-fund costs associated with the operation of the state capitol security division of the Nebraska State Patrol. Any money in the State Building 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.

(4) The charges for such leased and owned properties shall only be adjusted by the administrator on July 1. Prior to any adjustment in the system of charges, the Department of Administrative Services, on or before December 1 of the year preceding the effective date of such adjustment, shall provide electronic notification to the Committee on Building Maintenance, the Clerk of the Legislature, and the Legislative Fiscal Analyst of the proposed adjustment to the system of charges.

(5) Commencing on April 18, 1992, all leases of real property entered into by any state agency, board, commission, or department shall be subject to this section. Leases held by a state agency, board, commission, or department on such date shall be valid until the lease contract is terminated or is subject to renewal. The division shall monitor all such leases and determine when the lease is subject to renewal. Once the determination is made, the division shall cancel the lease as of the renewal date and shall treat the need of the agency, board, commission, or department as an original request for space and subject to this section. This subsection shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Transportation, and the Board of Educational Lands and Funds, (b) facilities to be leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) facilities to be leased for nonoffice use by the Department of Transportation, or (d) facilities controlled by the State Department of Education, which were formerly controlled by the Nebraska School for the Visually Handicapped, to be rented to state agencies or other parties by the department.

**Source:** Laws 1961, c. 353, § 1, p. 1113; Laws 1963, c. 421, § 1, p. 1347; R.R.S.1943, § 72-701.08; Laws 1974, LB 1048, § 13; Laws 1975, LB 359, § 13; Laws 1979, LB 576, § 5; Laws 1992, LB 1241, § 23; Laws 1995, LB 530, § 11; Laws 1998, LB 1100, § 22; Laws

1999, LB 813, § 57; Laws 2004, LB 439, § 22; Laws 2004, LB 1092, § 9; Laws 2007, LB322, § 26; Laws 2012, LB782, § 181; Laws 2017, LB339, § 286.

Cross References

**Committee on Building Maintenance**, see section 81-185.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1108.43 Capital construction project; prohibited acts; exceptions; warrant; when issued.**

(1) No state agency or department shall:

(a) Perform for itself any of the services normally performed by a professional engineer or architect in the preparation of plans and specifications for the construction, reconstruction, or alteration of any building or in the administration of the construction documents and final approval of the project when the total project cost is four hundred thousand dollars or more; and

(b) Employ its own work force for any such construction, reconstruction, or alteration of capital facilities when the total project cost is fifty thousand dollars or more.

(2) The Department of Administrative Services shall adjust the dollar amounts in subsection (1) of this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the department.

(3) This section shall not apply to the Department of Transportation or to any public power district, public power and irrigation district, irrigation district, or metropolitan utilities district. If, during the program statement review provided for under section 81-1108.41, it is determined that existing or standard plans and specifications are available or required for the project, the division may authorize an exemption from this section. The Director of Administrative Services shall not issue any warrant in payment for any work on a capital construction project unless the state agency or department files a certificate that it has complied with the provisions of this section.

**Source:** Laws 1969, c. 772, § 6, p. 2924; R.R.S.1943, § 81-1108.08; Laws 1974, LB 1048, § 36; Laws 1979, LB 38, § 2; Laws 1995, LB 530, § 15; Laws 1997, LB 622, § 122; Laws 1998, LB 1129, § 21; Laws 2007, LB256, § 13; Laws 2016, LB978, § 3; Laws 2017, LB339, § 287.

**81-1110.07 Accounting Division Cash Fund; created; use; investment.**

There is hereby created the Accounting Division Cash Fund. The fund shall be administered by the Department of Administrative Services. The fund shall consist of funds transferred from the State Building Renewal Assessment Fund and the Building Renewal Allocation Fund. The Accounting Division Cash Fund shall be used to finance the consolidation, implementation, operation, and migration of the state's existing enterprise resourcing planning (ERP) platform, the human resource management platform, an eProcurement platform, and other financial record-keeping platforms to an off-premise software driven platform or platforms. 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 2017, LB331, § 15.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1113 Budget division; powers; duties.**

The budget division shall prepare the executive budget in accordance with the wishes and policies of the Governor. The budget division shall have the following duties, powers, and responsibilities:

(1) Shall prescribe the forms and procedures to be employed by all departments and agencies of the state in compiling and submitting their individual budget requests and shall set up a budget calendar which shall provide for (a) the date, not later than July 15 of each even-numbered year, for distribution of instructions, (b) the date by which time requests for appropriations by each agency shall be submitted, and (c) the period during which such public hearings as the Governor may elect shall be held for each department and agency. The budget request shall be submitted each even-numbered year no later than the date provided in subsection (1) of section 81-132, shall include the intended receipts and expenditures by programs, subprograms, and activities and such additional information as the administrator may deem appropriate for each fiscal year, including the certification described in subdivision (4) of this section, shall be made upon a biennial basis, and shall include actual receipts and actual expenditures for each fiscal year of the most recently completed biennium and the first year of the current biennium and estimates for the second year of the current biennium and each year of the next ensuing biennium;

(2) Shall prescribe the forms and procedures to be employed by all departments and agencies of the state in compiling and submitting their proposed changes to existing appropriations for the biennium in progress. The budget division shall distribute instructions and forms to all departments and agencies no later than September 15 of each odd-numbered year. Departments and agencies shall submit their proposed changes no later than the date provided in subsection (2) of section 81-132;

(3) Shall work with each governmental department and agency in developing performance standards for each program, subprogram, and activity to measure and evaluate present as well as projected levels of expenditures. The budget division shall also work with the Department of Health and Human Services to develop key goals, benchmarks, and methods of quantification of progress required pursuant to sections 81-3133 to 81-3133.03;

(4)(a) Shall develop a certification form and procedure to be included in each budget request under subdivision (1) of this section through which each department and agency shall certify, for each program or practice it administers, whether such program or practice is an evidence-based program or practice, or, if not, whether such program or practice is reasonably capable of becoming an evidence-based program or practice;

(b) For purposes of this subdivision (4):

(i) Evidence-based means that a program or practice (A) offers a high level of research on effectiveness, determined as a result of multiple rigorous evaluations, such as randomized controlled trials and evaluations that incorporate strong comparison group designs or a single large multisite randomized study and (B) to the extent practicable, has specified procedures that allow for successful replication;

(ii) Program or practice means a function or activity that is sufficiently identifiable as a discrete unit of service; and

(iii) Reasonably capable of becoming an evidence-based program or practice means the program or practice is susceptible to quantifiable benchmarks that measure service delivery, client or customer satisfaction, or efficiency;

(5) Shall, following passage of legislative appropriations, be responsible for the administration of the approved budget through budgetary allotments;

(6) Shall be responsible for a monthly budgetary report for each department and agency showing comparisons between actual expenditures and allotments, which report shall be subject to review by the director and budget administrator; and

(7) Shall be responsible for the authorization of employee positions. Such authorizations shall be based on the following:

(a) A requirement that a sufficient budget program appropriation and salary limitation exist to fully fund all authorized positions;

(b) A requirement that permanent full-time positions which have been vacant for ninety days or more be reviewed and reauthorized prior to being filled. If requested by the budget division, the personnel division of the Department of Administrative Services shall review such vacant position to determine the proper classification for the position;

(c) A requirement that authorized positions accurately reflect legislative intent contained in legislative appropriation and intent bills; and

(d) Other relevant criteria as determined by the budget administrator.

**Source:** Laws 1965, c. 538, § 13, p. 1698; Laws 1967, c. 594, § 1, p. 2023; Laws 1969, c. 804, § 7, p. 3035; Laws 1981, LB 381, § 24; Laws 1986, LB 258, § 37; Laws 1992, Third Spec. Sess., LB 14, § 9; Laws 1997, LB 269, § 65; Laws 2002, Second Spec. Sess., LB 12, § 3; Laws 2003, LB 8, § 2; Laws 2012, LB949, § 3; Laws 2014, LB974, § 9; Laws 2016, LB1092, § 4.

**81-1113.01 State budgets; department and agency budget requests; budget forms and instructions; when distributed; additional forms.**

The forms and procedures required pursuant to subdivisions (1) and (2) of section 81-1113 shall only be prepared and distributed after:

(1) The final draft of the proposed budget forms and budget instructions have been provided to the Legislative Fiscal Analyst and an opportunity provided for recommendations from that office;

(2) The budget administrator and Legislative Fiscal Analyst have met and discussed the recommended changes; and

(3) A revised final draft of all proposed forms and instructions has been provided to the Legislative Fiscal Analyst.

If the budget administrator is unable to accommodate any recommended changes, the Legislative Fiscal Analyst shall be allowed to submit additional forms for the collection of information. Such forms shall be included as an attachment to the forms required by the Department of Administrative Services. All such forms shall be completed and submitted as a part of the budget submission and amendment process described in subdivisions (1) and (2) of section 81-1113.

**Source:** Laws 1978, LB 526, § 4; Laws 2016, LB1092, § 5.

**81-1114 Department of Administrative Services; building division; powers, duties, and responsibilities.**

The building division shall have the following powers, duties, and responsibilities:

(1) Shall prepare, for submittal to the Governor and to the office of the Legislative Fiscal Analyst, analyses of the cost of every desired land and building acquisition, new building construction, either underway or proposed, major repair or remodeling of new, newly acquired, or existing buildings, and each and every structural improvement to land, utilities, roads, walks, and parking lots, costing four hundred thousand dollars or more, but excluding right-of-way projects of the Department of Transportation. The analyses submitted to the Legislative Fiscal Analyst shall be submitted electronically. The Department of Administrative Services shall adjust the dollar amount in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustment shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the department;

(2) Shall record the relationship between the proposed capital facilities and the individual or departmental agencies' operating programs with particular attention to needs of immediate or future operations of the department or agency submitting such plan;

(3) Shall make recommendations to the Governor, the committee of the Legislature which shall from time to time have responsibility for preparing recommendations for appropriations, and the individual department or agency concerned, on the probable costs of such acquisition, construction, repair, or remodeling. The recommendations submitted to the committee shall be submitted electronically; and

(4) Shall require the submission by each department and agency of the state of copies of all written contracts for acquisition, construction, repair, or remodeling, including federal contracts, before such contracts are executed by the executive officer of the state authorized to execute such contracts, and shall maintain copies of such contracts on file for inspection by the Legislative Fiscal Analyst.

**Source:** Laws 1965, c. 538, § 14, p. 1699; Laws 1967, c. 594, § 2, p. 2024; Laws 1969, c. 804, § 8, p. 3036; Laws 1981, LB 381, § 25; Laws 1998, LB 1129, § 22; Laws 2003, LB 410, § 10; Laws 2012, LB782, § 185; Laws 2017, LB339, § 288.

**81-1118 Materiel division; established; duties; administrator; branches; established.**

The materiel division of the Department of Administrative Services is hereby established and shall be managed by the materiel administrator.

There are hereby established the following seven branches of the materiel division of the Department of Administrative Services which shall have the following duties, powers, and responsibilities:

(1) The office supplies bureau shall be responsible for providing office supplies, paper, and forms to using agencies;

(2) Central mail shall be responsible for all mailing operations, transportation of material, tracking shipments, and making freight claims;

(3) The print shop shall be responsible for specifications and for receiving bids and placing orders to the lowest and best commercial bidder for all printing and reproduction operations for the state. The print shop shall also be responsible for coordinating all existing printing and reproduction operations of the state;

(4) Copy services shall be responsible for the purchasing and placement of all copier requirements;

(5) The state purchasing bureau shall be responsible for all purchases by all state agencies other than the University of Nebraska. The materiel division shall administer the public notice and bidding procedures and any other areas designated by the Director of Administrative Services to carry out the lease or purchase of personal property. All purchases of and contracts for materials, supplies, or equipment and all leases of personal property shall be made in the following manner except in emergencies approved by the Governor:

(a) By a competitive formal sealed bidding process through the materiel division in all cases in which the purchases are of estimated value exceeding fifty thousand dollars;

(b) By a competitive informal bidding process through the materiel division in all cases in which the purchases are of estimated value equal to or exceeding twenty-five thousand dollars but equal to or less than fifty thousand dollars;

(c) By unrestricted open market purchases through the materiel division in all cases in which purchases are of estimated value of less than twenty-five thousand dollars;

(d) All requisitions for whatever purpose coming to the state purchasing bureau shall be in conformance with the approved budget of the requisitioning department or agency;

(e) All contracts for purchases and leases shall be bid as a single whole item. In no case shall contracts be divided or fractionated in order to produce several contracts which are of an estimated value below that required for competitive bidding; and

(f) No contract for purchase or lease shall be amended to extend the duration of the contract for a period of more than fifty percent of the initial contract term. Following the adoption of any amendment to extend the contract for a period of fifty percent or less of the initial contract term, no further extensions of the original contract shall be permitted. This subdivision (f) does not prohibit the exercise of any renewal option expressly provided in the original contract;

(6) The state recycling office shall be responsible for the administration and operation of the State Government Recycling Management Act; and

(7) State surplus property shall be responsible for the disposition of the state's surplus property and the maintenance of all inventory records.

Nothing in this section shall be construed to require that works of art must be procured through the materiel division.

**Source:** Laws 1965, c. 538, § 18, p. 1705; Laws 1969, c. 780, § 4, p. 2955; Laws 1974, LB 1054, § 32; Laws 1975, LB 359, § 14; Laws 1975, LB 447, § 8; Laws 1981, LB 381, § 29; Laws 1992, LB 1241, § 27; Laws 1997, LB 314, § 11; Laws 1998, LB 1129, § 24; Laws 2000, LB 654, § 26; Laws 2003, LB 626, § 10; Laws 2017, LB151, § 6; Laws 2017, LB320, § 5.

#### Cross References

State Government Recycling Management Act, see section 81-1183.

### **81-1119 Real property; purchases authorized.**

The Department of Administrative Services may purchase real property needed by the state which costs an amount equal to or less than ten percent of the amount set forth in subdivision (1)(a) of section 81-1108.43 as adjusted by subsection (2) of section 81-1108.43 without legislative approval or a specific appropriation for such purchase unless the purchase is made to evade the dollar limitation in this section and additional unapproved purchases will be made which, when considered together, would exceed the dollar limitation.

**Source:** Laws 1992, LB 1241, § 29; Laws 2017, LB320, § 6.

### **81-1120.22 Director of Communications; develop system of billings and charges; payment; deposit.**

The Director of Communications shall develop a system of equitable billings and charges for communications services provided in any consolidated or joint-use system of communications. Such system of charges shall reflect, as nearly as may be practical, the actual share of costs incurred on behalf of or for services to each department, agency, or political subdivision provided communications services. Using agencies shall pay for such services out of appropriated or available funds. Beginning July 1, 2011, all payments shall be credited to the Communications Revolving Fund. Beginning July 1, 2011, all collections for payment of telephone expenses shall be credited to the Communications Revolving Fund.

**Source:** Laws 1967, c. 572, § 8, p. 1883; Laws 1969, c. 584, § 109, p. 2416; Laws 1973, LB 431, § 1; Laws 1974, LB 1048, § 42; R.R.S.1943, § 81-1120.08; Laws 1975, LB 427, § 13; Laws 1995, LB 7, § 120; Laws 2011, LB378, § 27; Laws 2017, LB3, § 1.

### **81-1120.23 Repealed. Laws 2017, LB3, § 3.**

### **81-1121 Warrants; preparation and issuance; funds transfer systems; payment by mistake; adjustment.**

(1)(a) The Director of Administrative Services shall have power to develop and implement a system of warrant preparation and issuance in accordance with acceptable accounting and internal control safeguards and by use of such mechanical means as may be most economical.

(b) Warrant or state warrant shall include an order drawn by the director upon the State Treasurer, directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (2) and (3) of this section, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the director and the State Treasurer. The warrant, when it is an order drawn by the director upon the State Treasurer directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (2) and (3) of this section, shall affect the state's cash balance in the bank when redeemed by the State Treasurer, not when cashed by a financial institution.

(2) The director shall sign each warrant or shall cause each warrant to be signed in his or her behalf either personally, by delegation of authority, or by facsimile signature as will assure the most economical, timely, and practical means for making payments from the state treasury and which means provides the most acceptable safeguarding of public funds. The signature of the director shall signify that the payment intended by a warrant bearing such signature is proper under the appropriate laws of the state.

(3) The State Treasurer shall countersign all warrants issued by the director.

(4) The State Treasurer shall make such arrangements for facsimile signature of warrants as will assure the most economical, timely, and practical means for making payments from the state treasury.

(5) The director and the State Treasurer may establish and operate an electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the director and the State Treasurer for the payment of funds from and the deposit of receipts into the state treasury. Any state agency that wishes to establish and operate such a system shall jointly establish the procedures necessary to implement such a system with the cooperation of the director and the State Treasurer. The system shall be designed to be compatible with state accounting procedures. Such a system as established by the director shall employ internal control safeguards and after meeting such safeguards shall be deemed to satisfy any signature requirements. The use of an electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the director and the State Treasurer or any state agency shall not create any rights that would not have been created had an order, drawn by the director upon the State Treasurer directing the latter to pay a specified amount to a specified payee by the use of a dual signature negotiable instrument as provided for in subsections (2) and (3) of this section, been used as the payment medium.

(6) Whenever it is ascertained that by mistake or otherwise any county treasurer or other person has paid into the state treasury any sum not due the state, the director shall refund to such county treasurer or other person the amount so paid. Such refund shall be carried on the books of the state as an adjustment to income and not as an expenditure or disbursement.



(7) Whenever it is ascertained that by mistake or otherwise the State of Nebraska or any of its departments, agencies, or officers shall have caused to be made a disbursement which for any reason is refunded to the state, the amount so disbursed and refunded to the state shall be credited to the fund and account from which the disbursement was made as an adjustment of expenditures and disbursements and not as a receipt. Such credited refund shall be considered part of the original appropriation to the department or agency and to the appropriate program and may be expended therefrom without further or additional appropriation. When a refund to the state or any of its departments or agencies is related to a transaction which occurred during a prior fiscal period, the refund shall be credited to the unappropriated surplus account of the fund from which the disbursement was originally made, except that (a) medicaid refunds or rebates for (i) pharmaceuticals, (ii) third-party liability recoveries, and (iii) surveillance and utilization reviews which have occurred during a prior fiscal period shall be treated as an adjustment to expenditures in the year in which the refund or rebate is received and (b) reimbursement to the State of Nebraska from other member states operating in accordance with the Emergency Management Assistance Compact shall be credited as receipts to the Governor's Emergency Cash Fund.

**Source:** Laws 1965, c. 538, § 21, p. 1709; Laws 1989, LB 546, § 1; Laws 1993, LB 236, § 1; Laws 2001, LB 257, § 2; Laws 2018, LB945, § 19.

Effective date April 5, 2018.

**81-1126 Repealed. Laws 2016, LB978, § 5.**

**81-1127 Repealed. Laws 2016, LB978, § 5.**

**81-1128 Repealed. Laws 2016, LB978, § 5.**

**81-1129 Repealed. Laws 2016, LB978, § 5.**

#### (f) STATE GOVERNMENT RECYCLING MANAGEMENT ACT

**81-1185 State government recyclable material, defined.**

For purposes of the State Government Recycling Management Act, state government recyclable material means any product or material that has reached the end of its useful life, is obsolete, or is no longer needed by state government and for which there are readily available markets to take the material. State government recyclable material includes paper, paperboard, aluminum and other metals, yard waste, glass, tires, oil, and plastics. State government recyclable material does not include cans or other containers recycled under section 83-915.01 or material used in the production of goods or the provision of services by the correctional industries program of the Department of Correctional Services.

**Source:** Laws 1986, LB 380, § 1; R.S.1943, (1987), § 81-1140.01; Laws 1990, LB 987, § 2; R.S.Supp.,1990, § 81-1644; Laws 2000, LB 654, § 38; Laws 2015, LB605, § 83; Laws 2016, LB1080, § 2.

**STATE ADMINISTRATIVE DEPARTMENTS**

**ARTICLE 12**

**DEPARTMENT OF ECONOMIC DEVELOPMENT**

(a) GENERAL PROVISIONS

Section

- 81-1201.15. Business Recruitment Division; duties; information withheld from public.
- 81-1201.20. Department; adopt rules and regulations.
- 81-1201.21. Job Training Cash Fund; created; use; investment.
- 81-1210.01. Interns; grants; terms, defined.
- 81-1210.04. Intern Nebraska Cash Fund; created; use; investment.
- 81-1211. Lead-Based Paint Hazard Control Cash Fund; created; use; investment.
- 81-1212. Repealed. Laws 2015, LB 7, § 1.
- 81-1213. Industrial Recovery Fund; created; administration; investment; use; termination.

(c) NEBRASKA FILM OFFICE FUND

- 81-1220. Nebraska Film Office Fund; created; investment.

(e) RURAL WORKFORCE HOUSING INVESTMENT ACT

- 81-1226. Act, how cited.
- 81-1227. Legislative findings.
- 81-1228. Terms, defined.
- 81-1229. Workforce housing grant program; established; workforce housing grant; application; form; award; considerations; nonprofit organization; duties.
- 81-1230. Rural Workforce Housing Investment Fund; created; use; investment; return of grant funds; when required.
- 81-1231. Nonprofit development organization; annual report; contents; final report; failure to file; civil penalty.
- 81-1232. Department; duties; powers.
- 81-1233. Report to Legislature and Governor; contents; confidential.
- 81-1234. Rules and regulations.

(o) NEBRASKA OPPORTUNITY ZONE ACT

- 81-12,117. Repealed. Laws 2015, LB 4, § 1.
- 81-12,118. Repealed. Laws 2015, LB 4, § 1.
- 81-12,119. Repealed. Laws 2015, LB 4, § 1.
- 81-12,120. Repealed. Laws 2015, LB 4, § 1.
- 81-12,121. Repealed. Laws 2015, LB 4, § 1.
- 81-12,123. Repealed. Laws 2015, LB 4, § 1.
- 81-12,124. Repealed. Laws 2015, LB 4, § 1.

(r) SMALL BUSINESS INNOVATION ACT

- 81-12,136. Repealed. Laws 2017, LB5, § 1.
- 81-12,137. Repealed. Laws 2017, LB5, § 1.
- 81-12,138. Repealed. Laws 2017, LB5, § 1.
- 81-12,139. Repealed. Laws 2017, LB5, § 1.
- 81-12,140. Repealed. Laws 2017, LB5, § 1.
- 81-12,141. Repealed. Laws 2017, LB5, § 1.
- 81-12,142. Repealed. Laws 2017, LB5, § 1.
- 81-12,143. Repealed. Laws 2017, LB5, § 1.

(s) SITE AND BUILDING DEVELOPMENT ACT

- 81-12,146. Site and Building Development Fund; created; funding; investment.
- 81-12,147. Site and Building Development Fund; use; eligible activities.

(t) BUSINESS INNOVATION ACT

- 81-12,152. Act, how cited.
- 81-12,153. Terms, defined.
- 81-12,154. Purpose of act.
- 81-12,155.01. Bioscience Innovation Program; provide financial assistance.

Section	
81-12,156.	Funding; preference.
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81-12,163.01.	Bioscience Innovation Cash Fund; created; use; investment.
81-12,166.	Report; contents; certain records confidential.

#### (a) GENERAL PROVISIONS

##### **81-1201.15 Business Recruitment Division; duties; information withheld from public.**

(1) The primary responsibility of the Business Recruitment Division shall be the creation of jobs through the attraction of business to the state. The division shall develop a program of assistance to local governments, chambers of commerce, development organizations, and other entities involved in attracting new value-adding industries. Activities shall include, but not be limited to, industrial recruitment, marketing, international investment attraction, and technical assistance to community organizations in their recruitment efforts.

(2) Information regarding business recruitment, location, relocation, and expansion projects conducted by or with the assistance of the Business Recruitment Division may be withheld from the public until a public announcement by an authorized representative of the business or the Department of Economic Development is made about the project or until negotiations between the business and the division or other governmental entity regarding the project have been completed, whichever is earlier.

**Source:** Laws 1986, LB 965, § 15; Laws 1989, LB 639, § 5; Laws 2017, LB217, § 32.

##### **81-1201.20 Department; adopt rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out sections 81-1201.01 to 81-1201.20.

**Source:** Laws 1986, LB 965, § 20; Laws 2017, LB217, § 33.

##### **81-1201.21 Job Training Cash Fund; created; use; investment.**

(1) There is hereby created the Job Training Cash Fund. The fund shall be under the direction of the Department of Economic Development. Money may be transferred to the fund pursuant to subdivision (1)(b)(iii) of section 48-621 and from the Cash Reserve Fund at the direction of the Legislature. The department shall establish a subaccount for all money transferred from the Cash Reserve Fund to the Job Training Cash Fund on or after July 1, 2005.

(2) The money in the Job Training Cash Fund or the subaccount established in subsection (1) of this section shall be used (a) to provide reimbursements for job training activities, including employee assessment, preemployment training, on-the-job training, training equipment costs, and other reasonable costs related to helping industry and business locate or expand in Nebraska, (b) to provide upgrade skills training of the existing labor force necessary to adapt to new technology or the introduction of new product lines, (c) as provided in section 79-2308, or (d) as provided in section 48-3405. The department shall give a preference to job training activities carried out in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act.

(3) The department shall establish a subaccount within the fund to provide training grants for training employees and potential employees of businesses that (a) employ twenty-five or fewer employees on the application date, (b) employ, or train for potential employment, residents of rural areas of Nebraska, or (c) are located in or employ, or train for potential employment, residents of high-poverty areas as defined in section 81-1203. The department shall calculate the amount of prior year investment income earnings accruing to the fund and allocate such amount to the subaccount for training grants under this subsection. The subaccount shall also be used as provided in the Teleworker Job Creation Act. The department shall give a preference to training grants for businesses located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act.

(4) On April 5, 2018, any funds that were dedicated to carrying out sections 81-1210.01 to 81-1210.03 but were not yet expended shall be transferred to the Intern Nebraska Cash Fund.

(5) Any money in the Job Training 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 305, § 3; Laws 1994, LB 1066, § 107; Laws 1995, LB 1, § 15; Laws 2000, LB 953, § 11; Laws 2005, LB 427, § 1; Laws 2007, LB322, § 27; Laws 2008, LB956, § 1; Laws 2009, LB316, § 22; Laws 2009, First Spec. Sess., LB3, § 72; Laws 2010, LB961, § 1; Laws 2010, LB1081, § 12; Laws 2011, LB386, § 4; Laws 2012, LB946, § 11; Laws 2013, LB476, § 1; Laws 2014, LB800, § 6; Laws 2015, LB382, § 3; Laws 2015, LB661, § 34; Laws 2016, LB1110, § 14; Laws 2018, LB945, § 20.  
Effective date April 5, 2018.

#### Cross References

**Enterprise Zone Act**, see section 13-2101.01.

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**Teleworker Job Creation Act**, see section 48-3001.

### **81-1210.01 Interns; grants; terms, defined.**

For purposes of sections 81-1210.01 to 81-1210.03:

(1) Department means the Department of Economic Development;

(2) Internship means employment of a student in a professional or technical position for a limited period of time, by a business in Nebraska, in which the student (a) gains valuable work experience, (b) increases knowledge that assists

with career decisionmaking, and (c) assists the business in accelerating short-term business objectives; and

(3) Student means any person who:

(a) Is in eleventh or twelfth grade in a public or private high school or a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements in Nebraska;

(b) Is enrolled full-time in a college, university, or other institution of higher education; or

(c) Applies for an internship within six months following graduation from a college, university, or other institution of higher education.

**Source:** Laws 2011, LB386, § 1; Laws 2013, LB476, § 2; Laws 2016, LB1093, § 2.

#### **81-1210.04 Intern Nebraska Cash Fund; created; use; investment.**

The Intern Nebraska Cash Fund is created. The fund shall be used to carry out sections 81-1210.01 to 81-1210.03. 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. 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 2018, LB945, § 21.  
Effective date April 5, 2018.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

#### **81-1211 Lead-Based Paint Hazard Control Cash Fund; created; use; investment.**

The Lead-Based Paint Hazard Control Cash Fund is created in the Department of Economic Development. The fund shall receive transfers from the Affordable Housing Trust Fund as authorized by the Legislature. The department shall use the entirety of the fund to award a grant to a city of the metropolitan class to carry out lead-based paint hazard control on owner-occupied properties, contingent upon formal notification by the United States Department of Housing and Urban Development that it intends to award a grant to a city of the metropolitan class to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852, as such section existed on January 1, 2015. No more than fifteen percent of the grant proceeds may be used for administrative expenses. It is the intent of the Legislature that any grant awarded from the Lead-Based Paint Hazard Control Cash Fund shall be applied to the congressional district grant allocations as established under section 58-708. 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, LB661, § 37; Laws 2018, LB945, § 22.  
Effective date April 5, 2018.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1212 Repealed. Laws 2015, LB 7, § 1.**

**81-1213 Industrial Recovery Fund; created; administration; investment; use; termination.**

(1) The Industrial Recovery Fund is created. The fund shall be administered by the Department of Economic Development. 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 may provide assistance from the fund to a political subdivision impacted by a sudden and significant private-sector entity closure or downsizing that will have a significant impact on the community. The assistance shall be used to mitigate the economic impact of the closure or downsizing by making necessary improvements to the buildings and infrastructure, or both, related to the assets of the private-sector entity.

(3) The Industrial Recovery Fund terminates on May 30, 2015. Upon such date, the State Treasurer shall transfer fifty percent of the money in the fund to the Site and Building Development Fund and fifty percent of the money in the fund to the Affordable Housing Trust Fund.

**Source:** Laws 2011, LB388, § 9; Laws 2015, LB457, § 2.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(c) NEBRASKA FILM OFFICE FUND

**81-1220 Nebraska Film Office Fund; created; investment.**

The Nebraska Film Office Fund is created. The fund shall be administered by the Department of Economic Development. The fund shall consist of funds appropriated by the Legislature, gifts, grants, and bequests. 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 2018, LB945, § 8.  
Effective date April 5, 2018.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(e) RURAL WORKFORCE HOUSING INVESTMENT ACT

**81-1226 Act, how cited.**

Sections 81-1226 to 81-1234 shall be known and may be cited as the Rural Workforce Housing Investment Act.

**Source:** Laws 2017, LB518, § 1.

**81-1227 Legislative findings.**

The Legislature finds that:

(1) Current economic conditions and limited availability of modern housing units impact the ability of Nebraska's rural communities to recruit and retain a world-class workforce. A lack of workforce housing affects the ability of communities to maintain and develop viable, stable, and thriving economies. A housing shortage in rural areas also impacts the ability of local private, nonprofit, and public employers to grow and prosper;

(2) Impediments exist to the construction, rehabilitation, and financing of rural workforce housing. There is a shortage of contractors willing to develop new housing units in rural communities. Developers and contractors perceive increased risk associated with housing development in rural areas. Today's worker who is considering a job in a rural area has different expectations about the type and style of housing he or she desires. Costs for new housing in rural areas generally continue to grow faster than Nebraska incomes and the cost of living; and

(3) In order to develop attractive housing options that lead to the recruitment and retention of a world-class workforce in Nebraska's rural communities, it is the intent of the Legislature to use new and existing resources to support creation of workforce housing investment funds. Such funds will be used to encourage development of workforce housing in Nebraska's rural and under-served regions.

**Source:** Laws 2017, LB518, § 2.

**81-1228 Terms, defined.**

For purposes of the Rural Workforce Housing Investment Act:

- (1) Department means the Department of Economic Development;
- (2) Director means the Director of Economic Development;
- (3) Eligible activities of a nonprofit development organization means:
  - (a) New construction of owner-occupied or rental housing in a community with demonstrated workforce housing needs;
  - (b) Substantial repair or rehabilitation of dilapidated housing stock; or
  - (c) Upper-story housing development;
- (4) HOME funds means funds awarded as formula grants under the HOME Investment Partnerships Program administered by the United States Department of Housing and Urban Development;
- (5) Matching funds means dollars contributed by individuals, businesses, foundations, local and regional political subdivisions, or other nonprofit organizations to a workforce housing investment fund administered by a nonprofit development organization;
- (6) Nonprofit development organization means a regional or statewide nonprofit development organization approved by the director;
- (7) Qualified activities include, but are not limited to, purchase and rental guarantees, loan guarantees, loan participations, and other credit enhancements or any other form of assistance designed to reduce the cost of workforce housing related to eligible activities of the nonprofit development organization;
- (8) Qualified investment means a cash investment in a workforce housing investment fund administered by a nonprofit development organization;

(9) Rural community means any municipality in a county with a population of fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census;

(10) Workforce housing means:

(a) Housing that meets the needs of today's working families;

(b) Housing that is attractive to new residents considering relocation to a rural community;

(c) Owner-occupied housing units that cost not more than two hundred seventy-five thousand dollars to construct or rental housing units that cost not more than two hundred thousand dollars per unit to construct. For purposes of this subdivision (c), housing unit costs shall be updated annually by the department based upon the most recent increase or decrease in the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics;

(d) Owner-occupied and rental housing units for which the cost to substantially rehabilitate exceeds fifty percent of a unit's assessed value;

(e) Upper-story housing; and

(f) Housing that does not receive federal or state low-income housing tax credits, community development block grants, HOME funds, or funds from the Affordable Housing Trust Fund; and

(11) Workforce housing investment fund means a fund that has been created by a nonprofit development organization and certified by the director to encourage development of workforce housing in rural communities.

**Source:** Laws 2017, LB518, § 3.

**81-1229 Workforce housing grant program; established; workforce housing grant; application; form; award; considerations; nonprofit organization; duties.**

(1) The director shall establish a workforce housing grant program to foster and support the development of workforce housing in rural communities.

(2) A nonprofit development organization may apply to the director for approval of a workforce housing grant for a workforce housing investment fund. The application shall be in a form and manner prescribed by the director. Through fiscal year 2020-21, grants shall be awarded by the director on a competitive basis until grant funds are no longer available. Grant maximums shall not exceed one million dollars to any one nonprofit development organization over a two-year period, with no more than two million dollars cumulative for any single grantee through fiscal year 2020-21. Grants shall require a minimum one-to-one in matching funds to be considered a qualified grant application. Unallocated workforce housing grant funds held by the department shall be rolled to the next program year.

(3) Grants shall be awarded based upon:

(a) A demonstrated and ongoing housing need as identified by a recent housing study;

(b) A community or region that has a low unemployment rate and is having difficulty attracting workers and filling employment positions;

(c) A community or region that exhibits a demonstrated commitment to growing its housing stock;



(d) Projects that can reasonably be ready for occupancy in a period of twenty-four months; and

(e) A demonstrated ability to grow and manage a workforce housing investment fund.

(4) A workforce housing investment fund shall be required to receive annual certification from the department.

(5) A nonprofit development organization shall:

(a) Invest or intend to invest in workforce housing eligible activities;

(b) Use any fees, interest, loan repayments, or other funds it received as a result of the administration of the grant to support qualified activities; and

(c) Have an active board of directors with expertise in development, construction, and finance that meets at least quarterly to approve all qualified investments made by the nonprofit development organization. A nonprofit development organization shall have a formal plan and proven expertise to invest unused workforce housing investment fund balances and shall have an annual audit of all financial records conducted by an independent certified public accountant.

**Source:** Laws 2017, LB518, § 4.

**81-1230 Rural Workforce Housing Investment Fund; created; use; investment; return of grant funds; when required.**

(1) The Rural Workforce Housing Investment Fund is created. Funding for the grant program described in section 81-1229 shall come from the Rural Workforce Housing Investment Fund. The Rural Workforce Housing Investment Fund may include revenue from appropriations from the Legislature, grants, private contributions, and other sources. In addition, the State Treasurer shall make a one-time transfer of seven million three hundred thousand dollars on or before October 1, 2017, from the Affordable Housing Trust Fund to the Rural Workforce Housing Investment Fund. Any money in the Rural Workforce Housing Investment 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 administer the Rural Workforce Housing Investment Fund and may seek additional private or nonstate funds to use in the grant program, including, but not limited to, contributions from the Nebraska Investment Finance Authority and other interested parties.

(3) Interest earned by the department on grant funds shall be applied to the grant program.

(4) If a nonprofit development organization fails to engage in the initial qualified activity within twenty-four months after receiving initial grant funding, the nonprofit development organization shall return the grant funds to the department for credit to the Affordable Housing Trust Fund.

(5) If a nonprofit development organization fails to allocate any remaining initial grant funding on a qualified activity within twenty-four months after engaging in the initial qualified activity, the nonprofit development organization shall return such unallocated grant funds to the department for credit to the Rural Workforce Housing Investment Fund.

(6) Beginning July 1, 2022, any funds held by the department in the Rural Workforce Housing Investment Fund shall be transferred to the Affordable Housing Trust Fund.

**Source:** Laws 2017, LB518, § 5.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1231 Nonprofit development organization; annual report; contents; final report; failure to file; civil penalty.**

(1) Each nonprofit development organization shall submit an annual report to the director to be included as a part of the department's annual status report required under section 81-1201.11. The report shall certify that the nonprofit development organization meets the requirements of the Rural Workforce Housing Investment Act and shall include a breakdown of program activities.

(2) The annual report shall include, but not necessarily be limited to:

(a) The name and geographical location of the reporting nonprofit development organization;

(b) The number, amount, and type of workforce housing investment funds invested in qualified activities;

(c) The number, geographical location, type, and amount of investments made;

(d) A summary of matching funds and where such matching funds were generated; and

(e) The results of the annual audit required under subsection (5) of section 81-1229.

(3) If a nonprofit development organization ceases administration of a workforce housing investment fund, it shall file a final report with the director in a form and manner required by the director. Before July 1, 2022, any unallocated grant funds shall be returned to the department for credit to the Rural Workforce Housing Investment Fund. On and after July 1, 2022, any unallocated grant funds shall be returned to the department for credit to the Affordable Housing Trust Fund.

(4) If a nonprofit development organization fails to file a complete annual report by February 15, the director may, in his or her discretion, impose a civil penalty of not more than five thousand dollars for such violation. All money collected by the department 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.

**Source:** Laws 2017, LB518, § 6.

**81-1232 Department; duties; powers.**

(1) The department shall use its best efforts to assure that grant funds awarded to nonprofit development organizations are targeted to the geographic communities or regions with the most pressing economic and employment needs.

(2) The department shall use its best efforts to assure that the allocation of grant funds provides equitable access to the benefits provided by the Rural Workforce Housing Investment Act to all eligible geographical areas.

(3) The department may contract with a statewide public or private nonprofit organization which shall serve as agent for the department to help carry out the purposes and requirements of the Rural Workforce Housing Investment Act. The department or its agent may only use for expenses that portion of the funds available for the workforce housing grant program through the Rural Workforce Housing Investment Fund necessary to cover the actual costs of administering the program, including, but not limited to, the hiring of staff.

**Source:** Laws 2017, LB518, § 7.

#### **81-1233 Report to Legislature and Governor; contents; confidential.**

(1) As part of the department's annual status report required under section 81-1201.11, the department shall submit a report to the Legislature and the Governor that includes, but is not necessarily limited to:

(a) The number and geographical location of nonprofit development organizations establishing workforce housing investment funds;

(b) The number, amount, and type of workforce housing investment funds invested in qualified activities; and

(c) The number, geographical location, type, and amount of investments made by each nonprofit development organization.

(2) The report to the Legislature shall be submitted electronically.

(3) Information received, developed, created, or otherwise maintained by the department in administering and enforcing the Rural Workforce Housing Investment Act, other than information required to be included in the report to be submitted by the department to the Governor and Legislature pursuant to this section, may be deemed confidential by the department and not considered public records subject to disclosure pursuant to sections 84-712 to 84-712.09.

**Source:** Laws 2017, LB518, § 8.

#### **81-1234 Rules and regulations.**

The department may adopt and promulgate rules and regulations to administer and enforce the Rural Workforce Housing Investment Act.

**Source:** Laws 2017, LB518, § 9.

#### (o) NEBRASKA OPPORTUNITY ZONE ACT

**81-12,117 Repealed. Laws 2015, LB 4, § 1.**

**81-12,118 Repealed. Laws 2015, LB 4, § 1.**

**81-12,119 Repealed. Laws 2015, LB 4, § 1.**

**81-12,120 Repealed. Laws 2015, LB 4, § 1.**

**81-12,121 Repealed. Laws 2015, LB 4, § 1.**

**81-12,123 Repealed. Laws 2015, LB 4, § 1.**

**81-12,124 Repealed. Laws 2015, LB 4, § 1.**

## (r) SMALL BUSINESS INNOVATION ACT

**81-12,136 Repealed. Laws 2017, LB5, § 1.**

**81-12,137 Repealed. Laws 2017, LB5, § 1.**

**81-12,138 Repealed. Laws 2017, LB5, § 1.**

**81-12,139 Repealed. Laws 2017, LB5, § 1.**

**81-12,140 Repealed. Laws 2017, LB5, § 1.**

**81-12,141 Repealed. Laws 2017, LB5, § 1.**

**81-12,142 Repealed. Laws 2017, LB5, § 1.**

**81-12,143 Repealed. Laws 2017, LB5, § 1.**

## (s) SITE AND BUILDING DEVELOPMENT ACT

**81-12,146 Site and Building Development Fund; created; funding; investment.**

The Site and Building Development Fund is created. The fund shall receive money pursuant to section 76-903 and may include revenue from appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources. The Department of Economic Development, as part of its comprehensive business development strategy, shall administer the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2011, LB388, § 3; Laws 2015, LB457, § 3.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-12,147 Site and Building Development Fund; use; eligible activities.**

The Department of Economic Development shall use the Site and Building Development Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for industrial site and building development and for expenses of the department as appropriated by the Legislature for administering the fund. The following activities are eligible for assistance from the fund:

(1) Grants or zero-interest loans to villages, cities, or counties to acquire land, infuse infrastructure, or otherwise make large sites and buildings ready for industrial development;

(2) Matching funds for new construction, rehabilitation, or acquisition of land and buildings to assist villages, cities, and counties;

(3) Technical assistance, design and finance services, and consultation for villages, cities, and counties for the preparation and creation of industrial-ready sites and buildings;

(4) Loan guarantees for eligible projects;

(5) Projects making industrial-ready sites and buildings more accessible to business and industry;

(6) Infrastructure projects necessary for the development of industrial-ready sites and buildings;

(7) Projects that mitigate the economic impact of a closure or downsizing of a private-sector entity by making necessary improvements to buildings and infrastructure; and

(8) Public and private sector initiatives that will improve the military value of military installations by making necessary improvements to buildings and infrastructure.

**Source:** Laws 2011, LB388, § 4; Laws 2015, LB457, § 4; Laws 2018, LB96, § 1.  
Effective date July 19, 2018.

#### (t) BUSINESS INNOVATION ACT

##### **81-12,152 Act, how cited.**

Sections 81-12,152 to 81-12,167 shall be known and may be cited as the Business Innovation Act.

**Source:** Laws 2011, LB387, § 1; Laws 2017, LB641, § 3.  
Termination date December 1, 2021.

##### **81-12,153 Terms, defined.**

For purposes of the Business Innovation Act:

(1) Department means the Department of Economic Development;

(2) Federal grant program means the federal Small Business Administration's Small Business Innovation Research grant program or Small Business Technology Transfer grant program;

(3) Microenterprise means a for-profit business entity with not more than ten full-time equivalent employees;

(4) Prototype means an original model on which something is patterned by a resident of Nebraska or a company located in Nebraska; and

(5) Value-added agriculture means increasing the net worth of food or nonfood agricultural products by processing, alternative production and handling methods, collective marketing, or other innovative practices.

**Source:** Laws 2011, LB387, § 2; Laws 2015, LB449, § 1; Laws 2017, LB217, § 34.  
Termination date December 1, 2021.

##### **81-12,154 Purpose of act.**

The purpose of the Business Innovation Act is to encourage and support the transfer of Nebraska-based technology and innovation in rural and urban areas of Nebraska in order to create high growth, high technological companies, small businesses, and microenterprises and to enhance creation of wealth and quality jobs. The Legislature finds that the act will:

(1) Provide technical assistance planning grants pursuant to section 81-12,157 to facilitate phase one applications for the federal grant program;

(2) Provide financial assistance pursuant to section 81-12,157 to companies receiving phase one and phase two grants pursuant to the federal grant program;

(3) Provide financial assistance pursuant to section 81-12,158 to companies or individuals creating prototypes;

(4) Establish a financial assistance program pursuant to section 81-12,159 for innovation in value-added agriculture;

(5) Establish a financial assistance program for innovation in biosciences;

(6) Establish a financial assistance program pursuant to section 81-12,160 to identify commercial products and processes;

(7) Provide financial assistance pursuant to section 81-12,161 to companies using Nebraska public or private college and university researchers and facilities for applied research projects;

(8) Provide support and funding pursuant to section 81-12,162 for microlending and microenterprise entities; and

(9) Provide support for locally owned and operated Nebraska-based, high growth businesses by providing technical resources to foster development, growth, and high wage creation. For purposes of this subdivision, Nebraska-based, high growth business means a corporation, partnership, limited liability company, limited partnership, or limited liability partnership registered with the Secretary of State that has two to fifty employees and has annual sales of no less than five hundred thousand dollars and no more than two million five hundred thousand dollars.

**Source:** Laws 2011, LB387, § 3; Laws 2014, LB1114, § 2; Laws 2017, LB641, § 4.

Termination date December 1, 2021.

#### **81-12,155.01 Bioscience Innovation Program; provide financial assistance.**

(1) The department shall establish a Bioscience Innovation Program under the Business Innovation Act. The purpose of this program is to provide financial assistance to:

(a) Support small enterprise formation in the bioscience sector of Nebraska's rural and urban economies;

(b) Support the development of bioscience communities and economic opportunity through innovation in biofuels, biosensors, and biotechnology as it relates to animals, equipment, humans, industry, research, medical and health information, medical and health products, medical and health services, medical diagnostics, medical therapeutics, and pharmaceuticals;

(c) Enhance the creation of high-wage bioscience jobs to employ graduates of postsecondary educational institutions in Nebraska and to attract graduate students from other states;

(d) Encourage the development of new technologies in the bioscience sector and the creation of new startup businesses focused on bioscience;

(e) Leverage the state's agricultural sector to support the development of emerging bioscience technologies impacting livestock operations and crop production; and

(f) Leverage the bioscience research and development conducted at postsecondary educational institutions in Nebraska to create private-sector bioscience enterprises.

(2) Private bioscience businesses and enterprises operating in Nebraska shall be eligible for financial assistance as described in sections 81-12,157, 81-12,158, 81-12,160, and 81-12,161. A bioscience business or enterprise receiving financial assistance pursuant to any of such sections shall provide a match of one hundred percent for such assistance.

(3) The program shall terminate when the fund created under section 81-12,163.01 terminates.

**Source:** Laws 2017, LB641, § 2.

Termination date December 1, 2021.

### **81-12,156 Funding; preference.**

When selecting projects for funding under the Business Innovation Act, the department shall give a preference to projects located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act.

**Source:** Laws 2011, LB387, § 5; Laws 2014, LB800, § 8; Laws 2017, LB217, § 35.

Termination date December 1, 2021.

#### **Cross References**

**Enterprise Zone Act**, see section 13-2101.01.

### **81-12,157 Planning grants; phase one program; limitations.**

(1) The department shall establish a phase one program to provide grants to small businesses that qualify under the federal grant program for the purposes of planning for an application under the federal grant program. If a small business receives funding under the federal grant program, the department or a nonprofit entity designated by the department may make grants to match up to sixty-five percent of the amount of the federal grant.

(2) Planning grants under subsection (1) of this section shall not exceed five thousand dollars per project. Federal award matching grants under this section shall not exceed one hundred thousand dollars. No business shall receive funding for more than one project every two years.

(3) The department may award up to four million dollars per year for grants under this section.

**Source:** Laws 2011, LB387, § 6; Laws 2015, LB449, § 2.

Termination date December 1, 2021.

### **81-12,158 Financial assistance program to create prototype of certain products; established; funds; match required; limitation.**

(1) The department shall establish a financial assistance program to provide financial assistance to businesses that employ no more than five hundred employees or to individuals for the purposes of creating a prototype of a product stemming from research and development at a business operating in Nebraska or a public or private college or university in Nebraska.

(2) Funds shall be matched by nonstate funds equivalent in money equal to fifty percent of the funds requested. Matching funds may be from any nonstate

source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature. The amount the department may provide shall not exceed one hundred fifty thousand dollars per project.

(3) A business or individual applying for financial assistance under this section shall include a business plan that includes a proof-of-concept demonstration.

(4) Financial assistance under this section shall be expended within twenty-four months after the date of the awarding decision.

(5) The department may award up to four million dollars per year for financial assistance under this section.

**Source:** Laws 2011, LB387, § 7; Laws 2015, LB449, § 3.  
Termination date December 1, 2021.

**81-12,159 Innovation in value-added agriculture program; established; purpose; eligibility; match required; limitation.**

(1) The department shall establish an innovation in value-added agriculture program. The purpose of this program is to provide financial assistance to:

(a) Support small enterprise formation in the agricultural sector of Nebraska's rural economy, including innovative efforts for value-added enterprises;

(b) Support the development of agricultural communities and economic opportunity through innovation in farming and ranching operations, rural communities, and businesses for the development of value-added agricultural products;

(c) Enhance the income and opportunity for farming and ranching operations in Nebraska in order to stem the decline in their numbers;

(d) Increase the farming and ranching operations' share of the food-system profit;

(e) Enhance opportunities for farming and ranching operations to participate in electronic commerce and new and emerging markets that strengthen rural economic opportunities; and

(f) Encourage the production and marketing of specialty crops in Nebraska and support the creation and development of agricultural enterprises and businesses that produce and market specialty crops in Nebraska.

(2) Agricultural cooperatives, farming or ranching operations, and private businesses and enterprises operating in Nebraska shall be eligible for financial assistance under this section.

(3) An entity receiving financial assistance shall provide a match of twenty-five percent for such assistance.

(4) The department may award up to four million dollars per year for financial assistance under this section.

**Source:** Laws 2011, LB387, § 8; Laws 2015, LB449, § 4.  
Termination date December 1, 2021.

**81-12,160 Financial assistance program to commercialize product or process; established; purpose; funds; match required; limitation; contract with venture development organization.**



(1) The department shall establish a financial assistance program to provide financial assistance to businesses operating in Nebraska that employ no more than five hundred employees or to individuals that have a prototype of a product or process for the purposes of commercializing such product or process. The applicant shall submit a feasibility study stating the potential sales and profit projections for the product or process.

(2) The department shall create a program with the following provisions to support commercialization of a product or process:

(a) Commercialization infrastructure documentation, including market assessments and start-up strategic planning;

(b) Promotion, marketing, advertising, and consulting;

(c) Management and business planning support;

(d) Linking companies and entrepreneurs to mentors;

(e) Preparing companies and entrepreneurs to acquire venture capital; and

(f) Linking companies to sources of capital.

(3) Funds shall be matched by nonstate funds equal to fifty percent of the funds requested. Matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature.

(4) The department shall not provide more than five hundred thousand dollars to any one project. Each year the department may award up to four million dollars under this section.

(5) Financial assistance provided under this section shall be expended within twenty-four months after the date of the awarding decision.

(6) To carry out this section, the department shall contract with one statewide venture development organization that is incorporated in the State of Nebraska and exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code.

**Source:** Laws 2011, LB387, § 9; Laws 2015, LB449, § 5; Laws 2016, LB1093, § 3; Laws 2017, LB331, § 50.

Termination date December 1, 2021.

**81-12,161 Financial assistance program relating to college or university research and development; established; funds; match required; limitation.**

(1) The department shall establish a financial assistance program to provide financial assistance to businesses operating in Nebraska that use the faculty or facilities of a public or private college or university in Nebraska for applied research and development of new products or use intellectual property generated at a public or private college or university in Nebraska.

(2) A business may apply for up to two awards in any four-year period per project. The department may provide up to one hundred thousand dollars for the first phase of a project. If the first phase is successful and agreed-upon contractual requirements are met during the first phase, the department may provide up to four hundred thousand dollars for the second phase of the project.

(3) Funds shall be matched by nonstate funds equivalent in money equal to one hundred percent of the funds requested for both phases of the project.

Matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature.

(4) The department may award up to four million dollars per year for financial assistance under this section.

**Source:** Laws 2011, LB387, § 10; Laws 2015, LB449, § 6.  
Termination date December 1, 2021.

**81-12,162 Small business investment program; established; award; criteria; considerations; funds; match required; department; contracts authorized; limitation.**

(1) The department shall establish a small business investment program. The program:

(a) Shall provide grants to microloan delivery or microloan technical assistance organizations to:

(i) Better assure that Nebraska's microenterprises are able to realize their full potential to create jobs, enhance entrepreneurial skills and activity, and increase low-income households' capacity to become self-sufficient;

(ii) Provide funding to foster the creation of microenterprises;

(iii) Establish the department as the coordinating office for the facilitation of microlending and microenterprise development;

(iv) Facilitate the development of a permanent, statewide infrastructure of microlending support organizations to serve Nebraska's microenterprise and self-employment sectors;

(v) Enable the department to provide grants to community-based microenterprise development organizations in order to encourage the development and growth of microenterprises throughout Nebraska; and

(vi) Enable the department to engage in contractual relationships with statewide microlending support organizations which have the capacity to leverage additional nonstate funds for microenterprise lending.

To the maximum extent possible, the selection process should assure that the distribution of such financial assistance provides equitable access to the benefits of the Business Innovation Act by all geographic areas of the state; and

(b) May identify and coordinate other state and federal sources of funds which may be available to the department to enhance the state's ability to facilitate financial assistance pursuant to the program.

(2) To establish the criteria for making an award to a microloan delivery or microloan technical assistance organization, the department shall consider:

(a) The plan for providing business development services and microloans to microenterprises;

(b) The scope of services to be provided by the microloan delivery or microloan technical assistance organization;

(c) The plan for coordinating the services and loans provided by the microloan delivery or microloan technical assistance organization with commercial lending institutions;

(d) The geographic representation of all regions of the state, including both urban and rural communities and neighborhoods;

(e) The ability of the microloan delivery or microloan technical assistance organization to provide for business development in areas of chronic economic distress and low-income regions of the state;

(f) The ability of the microloan delivery or microloan technical assistance organization to provide business training and technical assistance to microenterprise clients;

(g) The ability of the microloan delivery or microloan technical assistance organization to monitor and provide financial oversight of recipients of microloans; and

(h) Sources and sufficiency of operating funds for the microenterprise development organization.

(3) Awards made by the department to a microloan delivery or microloan technical assistance organization may be used to:

(a) Satisfy matching fund requirements for other federal or private grants;

(b) Establish a revolving loan fund from which the microloan delivery or microloan technical assistance organization may make loans to microenterprises;

(c) Establish a guaranty fund from which the microloan delivery or microloan technical assistance organization may guarantee loans made by commercial lending institutions to microenterprises;

(d) Provide funding for the operating costs of a microloan delivery or microloan technical assistance organization not to exceed twenty percent; and

(e) Provide grants to establish loan-loss reserve funds to match loan capital borrowed from other sources, including federal microenterprise loan programs.

(4) Any award of financial assistance to a microloan delivery or microloan technical assistance organization shall meet the following qualifications:

(a) Funds shall be matched by nonstate funds equivalent in money or in-kind contributions or a combination of both equal to thirty-five percent of the grant funds requested. Such matching funds may be from any nonstate source, including private foundations, federal or local government sources, quasi-governmental entities, or commercial lending institutions, or any other funds whose source does not include funds appropriated by the Legislature;

(b) Microloan funds shall be disbursed in microloans which do not exceed one hundred thousand dollars or used to capitalize loan-loss reserve funds for such loans; and

(c) A minimum of fifty percent of the microloan funds shall be used by a microenterprise development assistance organization for small business technical assistance.

The department shall contract with a statewide microenterprise development assistance organization to carry out this section.

(5) Each year the department may award up to two million dollars under this section.

**Source:** Laws 2011, LB387, § 11; Laws 2015, LB449, § 7; Laws 2016, LB1093, § 4; Laws 2017, LB331, § 51.

Termination date December 1, 2021.

**81-12,163 Appropriations; legislative intent.**

(1) It is the intent of the Legislature to appropriate seven million dollars from the General Fund to the department for the Business Innovation Act for each of fiscal years 2015-16 and 2016-17.

(2) Up to five percent of the funds appropriated may be used by the department, or by a nonprofit entity with which the department contracts, for administrative expenses.

**Source:** Laws 2011, LB387, § 12; Laws 2015, LB449, § 8.  
Termination date December 1, 2021.

**81-12,163.01 Bioscience Innovation Cash Fund; created; use; investment.**

(1) The Bioscience Innovation Cash Fund is created. The fund shall be administered by the department to provide financial assistance to bioscience-related businesses applying for financial assistance under the Business Innovation 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.

(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) beginning October 1, 2017, received by the department as repayments of loans from the Nebraska Progress Loan Fund as authorized by the federal State Small Business Credit Initiative Act of 2010, 12 U.S.C. 5701 et seq., as such act existed on January 1, 2017.

(3) Money in the fund shall be expended by the department for the purpose of carrying out the Bioscience Innovation Program.

(4) Up to five percent of the fund may be used by the department for administrative expenses.

(5) The fund shall terminate on exhaustion of its funds following receipt of the final loan repayment provided for in subdivision (2)(b) of this section.

**Source:** Laws 2017, LB641, § 1.

Termination date December 1, 2021.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-12,166 Report; contents; certain records confidential.**

(1) The department shall submit an annual report to the Governor and the Legislature on or before July 1 of each year which includes, but is not limited to, a description of the demand for financial assistance and programs under the Business Innovation Act from all geographic regions in Nebraska, a listing of the recipients and amounts of financial assistance awarded pursuant to the act in the previous fiscal year, the impact of the financial assistance, and an evaluation of the act's performance based on the documented goals of the recipients. The report submitted to the Legislature shall be submitted electronically. The department may require recipients to provide periodic performance

reports to enable the department to fulfill the requirements of this section. The report shall contain no information that is protected by state or federal confidentiality laws.

(2) Applications for funding and related documentation which may be received, developed, created, or otherwise maintained by the Department of Economic Development in administering the Business Innovation Act may be deemed confidential by the department and not subject to public disclosure.

**Source:** Laws 2011, LB387, § 15; Laws 2012, LB782, § 196; Laws 2015, LB449, § 9.

Termination date December 1, 2021.

## ARTICLE 13 PERSONNEL

### (a) STATE PERSONNEL SERVICE

Section

- 81-1316. State Personnel System; exemptions.
- 81-1328. State employees; vacation time; schedule; request to use vacation time; employing agency; duties.
- 81-1348. Suggestion Award Board; created; membership; expenses; rules and regulations.
- 81-1354.05. Personnel Division Revolving Fund; created; use; investment.

### (c) STATE EMPLOYEES COLLECTIVE BARGAINING ACT

- 81-1377. Negotiation of labor contracts; Nebraska State Patrol; limitation on disciplinary procedures or collective bargaining.

### (e) SEXUAL HARASSMENT

- 81-1395. Report of sexual harassment to Department of Administrative Services; duties; confidentiality; prohibited actions.

### (a) STATE PERSONNEL SERVICE

#### **81-1316 State Personnel System; exemptions.**

(1) All agencies and personnel of state government shall be covered by sections 81-1301 to 81-1319 and shall be considered subject to the State Personnel System, except the following:

- (a) All personnel of the office of the Governor;
- (b) All personnel of the office of the Lieutenant Governor;
- (c) All personnel of the office of the Secretary of State;
- (d) All personnel of the office of the State Treasurer;
- (e) All personnel of the office of the Attorney General;
- (f) All personnel of the office of the Auditor of Public Accounts;
- (g) All personnel of the Legislature;
- (h) All personnel of the court systems;
- (i) All personnel of the Board of Educational Lands and Funds;
- (j) All personnel of the Public Service Commission;
- (k) All personnel of the Nebraska Brand Committee;
- (l) All personnel of the Commission of Industrial Relations;
- (m) All personnel of the State Department of Education;

(n) All personnel of the Nebraska state colleges and the Board of Trustees of the Nebraska State Colleges;

(o) All personnel of the University of Nebraska;

(p) All personnel of the Coordinating Commission for Postsecondary Education;

(q) All personnel of the Governor’s Policy Research Office, but not to include personnel within the State Energy Office;

(r) All personnel of the Commission on Public Advocacy;

(s) All agency heads;

(t)(i) The Director of Behavioral Health of the Division of Behavioral Health; (ii) the Director of Children and Family Services of the Division of Children and Family Services; (iii) the Director of Developmental Disabilities of the Division of Developmental Disabilities; (iv) the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care; and (v) the Director of Public Health of the Division of Public Health;

(u) The chief medical officer established under section 81-3115, the Administrator of the Office of Juvenile Services, and the chief executive officers of the Beatrice State Developmental Center, Lincoln Regional Center, Norfolk Regional Center, Hastings Regional Center, Grand Island Veterans’ Home, Norfolk Veterans’ Home, Eastern Nebraska Veterans’ Home, Western Nebraska Veterans’ Home, Youth Rehabilitation and Treatment Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;

(v) The chief executive officers of all facilities operated by the Department of Correctional Services and the medical director for the department appointed pursuant to section 83-4,156;

(w) All personnel employed as pharmacists, physicians, psychiatrists, or psychologists by the Department of Correctional Services;

(x) All personnel employed as pharmacists, physicians, psychiatrists, psychologists, service area administrators, or facility operating officers of the Department of Health and Human Services or the Department of Veterans’ Affairs;

(y) Deputies and examiners of the Department of Banking and Finance and the Department of Insurance as set forth in sections 8-105 and 44-119, except for those deputies and examiners who remain in the State Personnel System; and

(z) All personnel of the Tax Equalization and Review Commission.

(2) At each agency head’s discretion, up to the following number of additional positions may be exempted from the State Personnel System, based on the following agency size categories:

Number of Agency Employees	Number of Noncovered Positions
less than 25	0
25 to 100	1
101 to 250	2
251 to 500	3
501 to 1000	4
1001 to 2000	5
2001 to 3000	8
3001 to 4000	11

4001 to 5000	40
over 5000	50

The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head. An agency with over five thousand employees shall provide notice in writing to the Health and Human Services Committee of the Legislature when forty noncovered positions have been filled by the agency head pursuant to this subsection.

(3) No changes to this section or to the number of noncovered positions within an agency shall affect the status of personnel employed on the date the changes become operative without their prior written agreement. A state employee’s career protections or coverage by personnel rules and regulations shall not be revoked by redesignation of the employee’s position as a noncovered position without the prior written agreement of such employee.

**Source:** Laws 1967, c. 573, § 16, p. 1896; Laws 1969, c. 802, § 8, p. 3025; Laws 1971, LB 637, § 1; Laws 1987, LB 491, § 13; Laws 1988, LB 1106, § 1; Laws 1996, LB 1044, § 867; Laws 1998, LB 1073, § 165; Laws 2000, LB 654, § 41; Laws 2002, LB 876, § 86; Laws 2002, LB 1062, § 65; Laws 2003, LB 85, § 3; Laws 2003, LB 245, § 16; Laws 2006, LB 994, § 114; Laws 2007, LB296, § 756; Laws 2008, LB745, § 1; Laws 2008, LB965, § 23; Laws 2011, LB218, § 1; Laws 2017, LB340, § 17; Laws 2018, LB827, § 3.  
Effective date July 19, 2018.

Cross References

For other exemptions, see sections 49-14,121 and 72-1242.

**81-1328 State employees; vacation time; schedule; request to use vacation time; employing agency; duties.**

(1) State employees shall, during each year of continuous employment, be entitled to ninety-six working hours of vacation leave with full pay.

(2) State employees who complete five years of continuous employment by the state shall be entitled to one hundred twenty hours of vacation leave during their sixth year of employment and shall thereafter be entitled to eight additional hours of vacation leave with full pay for each additional year of continuous state employment up to a maximum of two hundred hours of vacation leave a year. Vacation leave shall be earned in accordance with the following schedule:

During 1st year of continuous employment	96 hours per year
During 2nd year of continuous employment	96 hours per year
During 3rd year of continuous employment	96 hours per year
During 4th year of continuous employment	96 hours per year
During 5th year of continuous employment	96 hours per year
During 6th year of continuous employment	120 hours per year
During 7th year of continuous employment	128 hours per year
During 8th year of continuous employment	136 hours per year

During 9th year of continuous employment . . . . .	144 hours per year
During 10th year of continuous employment . . . . .	152 hours per year
During 11th year of continuous employment . . . . .	160 hours per year
During 12th year of continuous employment . . . . .	168 hours per year
During 13th year of continuous employment . . . . .	176 hours per year
During 14th year of continuous employment . . . . .	184 hours per year
During 15th year of continuous employment . . . . .	192 hours per year
During 16th year of continuous employment . . . . .	200 hours per year
After 16th year of continuous employment . . . . .	200 hours per year

(3) State employees who are regularly employed less than forty hours a week shall be entitled to vacation leave proportionate to their regular workweek. Any state employee who has been employed by the Legislature or Legislative Council shall, for vacation leave entitlement purposes, be credited with one continuous year of employment for each two hundred sixty working days such state employee was employed by the Legislature or Legislative Council.

(4) As used in this section, state employee shall mean any person or officer employed by the state including the head of any department or agency, except when such a head is a board or commission, and who works a full-time or part-time schedule on an ongoing basis.

(5) For purposes of this section, a state employee who has terminated employment with the state for any reason other than disciplinary and who returns to state employment within one year from the date of termination shall have his or her service for vacation leave entitlement computed by combining prior continuous service with current continuous service disregarding the period of absence, except that a state employee who has retired or voluntarily terminated in lieu of retirement shall, if he or she returns to state employment, be considered a new state employee for the purpose of vacation leave entitlement.

(6) The vacation leave account of each state employee shall be balanced as of 11:59 p.m. Central Standard Time on December 31 each calendar year. Each state employee shall be entitled to have accumulated as of such time the number of hours of vacation leave which he or she earned during that calendar year. Hours of vacation leave accumulated in excess of that number shall be forfeited. Any state employee shall be entitled to use any vacation time as soon as it has accrued. Any vacation time not used within one calendar year following the calendar year during which the time accrued shall be forfeited. In special and meritorious cases, when to limit the annual leave to the period therein specified would work a peculiar hardship, such leave may be extended in the discretion of the Governor, or in situations involving employees of the Legislature, in the discretion of the Executive Board of the Legislative Council.

(7) It is the responsibility of the head of an employing agency to provide reasonable opportunity for a state employee to use rather than forfeit accumulated vacation leave. If a state employee makes a reasonable written request to use vacation leave before the leave must be forfeited under this section and the employing agency denies the request, the employing agency shall pay the state employee the cash equivalent of the amount of forfeited vacation leave that was requested and denied. Such cash payment shall be made within thirty days after the requested and denied vacation leave is forfeited under this section.



Such cash payment shall be considered compensation for purposes of a state employee's retirement benefit in a defined contribution or cash balance benefit plan administered by the Public Employees Retirement Board but shall not be considered compensation for purposes of a state employee's retirement benefit in any other defined benefit plan administered by the Public Employees Retirement Board. In determining whether a state employee's request to use vacation leave is reasonable, the employing agency shall consider the amount of vacation leave requested, the number of days remaining prior to forfeiture during which the state employee may take vacation leave, the amount of notice given to the employing agency prior to the requested vacation leave, any effects on public safety, and other relevant factors. This subsection shall not apply to state employees who are exempt from the State Personnel System pursuant to subdivisions (1)(g) and (h) of section 81-1316.

(8) Each state employee, upon retirement, dismissal, or voluntary separation from state employment, shall be paid for unused accumulated vacation leave. Upon the death of a state employee, his or her beneficiary shall be paid for unused accumulated vacation leave.

(9) A permanent state employee who is transferred from one agency to another shall have his or her accrued vacation leave transferred to the receiving agency.

(10) The Director of Personnel shall adopt and promulgate such rules and regulations as are necessary to administer this section.

**Source:** Laws 1973, LB 469, § 1; Laws 1974, LB 890, § 1; Laws 1993, LB 697, § 6; Laws 2016, LB830, § 2.

**81-1348 Suggestion Award Board; created; membership; expenses; rules and regulations.**

There is hereby created the Suggestion Award Board. The membership of such board shall consist of the Director of Personnel, the Director of Administrative Services, the Auditor of Public Accounts or his or her designee, and three persons, each to serve a term of three years, selected and appointed by the Governor from the bargaining units listed in section 81-1373, except that the first three appointments made after February 23, 2000, shall be for terms of one year, two years, and three years, as designated by the Governor. Of the persons selected from such bargaining units, one person shall be selected from each of such bargaining units as follows:

(1) The first term from the bargaining units listed in subdivisions (1)(a), (b), and (l) of such section;

(2) The second term from the bargaining units listed in subdivisions (1)(c), (d), and (g) of such section;

(3) The third term from the bargaining units listed in subdivisions (1)(e), (f), and (h) of such section; and

(4) The fourth term from the bargaining units listed in subdivisions (1)(i), (j), and (k) of such section.

After the fourth term, the appointments shall be made starting from subdivision (1) of this section and following the same sequence.

Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the same bargaining unit in which the vacancy exists.

The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

The board shall adopt and promulgate rules and regulations to aid in carrying out sections 81-1350 and 81-1351.

**Source:** Laws 1978, LB 286, § 3; Laws 1993, LB 44, § 15; Laws 1995, LB 395, § 3; Laws 2000, LB 654, § 42; Laws 2017, LB151, § 7.

**81-1354.05 Personnel Division Revolving Fund; created; use; investment.**

(1) The Personnel Division Revolving Fund is created. The fund shall be administered by the personnel division of the Department of Administrative Services. The fund shall consist of (a) all funds received by the personnel division for employee recognition programs and advertising and (b) assessments charged by the Director of Personnel to state agencies, boards, and commissions for human service management services provided by the division. Such assessments shall be adequate to cover actual and necessary expenses associated with providing the services. The fund shall be used to pay for expenses incurred by the division to provide such services.

(2) State agencies, boards, and commissions shall make the personnel division assessment payments to the fund (a) in one payment no later than August 1 of each year, (b) in two equal payments the first of which shall be made no later than August 1 and the second of which shall be made no later than February 1 of each year, or (c) in four equal payments to be made no later than August 1, October 1, February 1, and April 1 of each year, at the discretion of the personnel administrator.

(3) 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 654, § 36; Laws 2015, LB661, § 35.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

(c) STATE EMPLOYEES COLLECTIVE BARGAINING ACT

**81-1377 Negotiation of labor contracts; Nebraska State Patrol; limitation on disciplinary procedures or collective bargaining.**

(1) The Chief Negotiator or any other employer-representative and the exclusive collective-bargaining agent for employees under the Chief Negotiator's or employer-representative's jurisdiction shall bargain and negotiate labor contracts in good faith and reasonably in advance of the budget-making process.

(2) Retirement programs shall not be bargainable by or on behalf of any state employee.

(3) Nothing in the disciplinary procedures or collective-bargaining agreement of the Nebraska State Patrol shall:

(a) Limit the discretion of the Superintendent of Law Enforcement and Public Safety to disclose to the Legislature, the Nebraska Commission on Law Enforcement and Criminal Justice, the Nebraska Police Standards Advisory

Council, the Equal Opportunity Commission, or a complainant the status or outcome of an internal investigation or discipline;

(b) Limit the consideration by the patrol, for purposes of progressive discipline, of disciplinary action in a prior case that occurred within the ten years preceding the date such progressive discipline is imposed;

(c) Limit the time during which a disciplinary investigation may be initiated or discipline may be imposed to less than two years after the occurrence of the conduct which is the subject of the investigation or discipline;

(d) Require the release to a member who is under internal investigation for an allegation that could result in a charge of a Class I misdemeanor or felony or an allegation involving dishonesty, prior to the initial internal investigation interview, of reports and materials concerning the internal investigation of such member, except that the member shall be entitled to know the nature of the complaint underlying the investigation;

(e) Limit or restrict access by the individual or individuals conducting the internal investigation to materials, including records of current or past discipline or misconduct, regarding the member under investigation; or

(f) Prevent, limit, or restrict access by the Nebraska Commission on Law Enforcement and Criminal Justice to internal investigation reports or materials.

(4) The obligation to negotiate in good faith shall not compel the Chief Negotiator or any other employer-representative or the exclusive collective-bargaining agent to agree to a proposal or make a concession.

(5) All contracts involving state employees and negotiated pursuant to the Industrial Relations Act or the State Employees Collective Bargaining Act shall cover a two-year period coinciding with the biennial state budget, except that the first contract entered into by a bargaining unit may cover only the second fiscal year of the biennium.

**Source:** Laws 1987, LB 661, § 9; Laws 2018, LB791, § 3.  
Effective date April 24, 2018.

#### Cross References

**Industrial Relations Act**, see section 48-801.01.

### (e) SEXUAL HARASSMENT

**81-1395 Report of sexual harassment to Department of Administrative Services; duties; confidentiality; prohibited actions.**

(1) A state employee may make a report of sexual harassment to the Department of Administrative Services. The department shall investigate the report or ensure that an investigation is conducted by the agency which employs the reporting employee.

(2) The department and the agency which employs the reporting employee shall maintain the confidentiality of the reporting employee and any other person making a report of sexual harassment or participating in an investigation or internal agency proceeding under this section except:

(a) When disclosure is authorized in writing by such employee or other person;

(b) The identity of such employee or other person may be disclosed to the individual alleged to have committed the sexual harassment; and

(c) When necessary for conducting the investigation or imposing discipline.

(3) The agency employing the reporting employee shall not retaliate or discriminate against the reporting employee or any other person for:

(a) Initiating or participating in the making of a report of sexual harassment; or

(b) Testifying, assisting, or participating in an investigation, proceeding, or action concerning the sexual harassment.

**Source:** Laws 2018, LB791, § 5.

Effective date April 24, 2018.

## ARTICLE 14

### LAW ENFORCEMENT

#### (a) LAW ENFORCEMENT TRAINING

Section

81-1401. Terms, defined.

#### (b) COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

81-1415. Commission, defined.

81-1416. Nebraska Commission on Law Enforcement and Criminal Justice; created; purpose.

81-1417. Commission; members; qualifications; appointment; terms; special committee.

81-1423. Commission; powers; duties.

81-1425. Executive director; powers; duties.

81-1426.01. County Justice Reinvestment Grant Program; created; grant recipient; duties; report.

81-1429.01. Crimes Against Children Fund; created; use; investment; termination.

81-1429.02. Human Trafficking Victim Assistance Fund; created; use; investment.

81-1429.03. Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements; Sexual Assault Payment Program; administrator; duties; Sexual Assault Payment Program Cash Fund; created; use; investment.

#### (c) HUMAN TRAFFICKING

81-1430. Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.

#### (e) OFFICE OF VIOLENCE PREVENTION

81-1450. Office of Violence Prevention; director; administration and supervision; responsibilities; report; advisory council; meetings; duties.

#### (f) BODY-WORN CAMERAS

81-1452. Body-worn cameras; terms, defined.

81-1453. Body-worn cameras; model policy; development and distribution; contents; law enforcement agency; duties.

81-1454. Body-worn camera policy; contents.

#### (g) EYEWITNESS SUSPECT IDENTIFICATION

81-1455. Eyewitness suspect identification; written policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; duties.

#### (h) EMPLOYMENT RECORDS

81-1456. Employment of law enforcement officer; submit personnel change in status form; record; contents; report of termination or resignation in lieu of termination.

81-1457. Employment of law enforcement officer; waiver to prospective employer; contents; form; former employer; duties.

## (a) LAW ENFORCEMENT TRAINING

**81-1401 Terms, defined.**

For purposes of sections 81-1401 to 81-1414.10, unless the context otherwise requires:

(1) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Council means the Nebraska Police Standards Advisory Council;

(3) Director means the director of the Nebraska Law Enforcement Training Center;

(4) Felony means a crime punishable by imprisonment for a term of more than one year or a crime committed outside of Nebraska which would be punishable by imprisonment for a term of more than one year if committed in Nebraska;

(5) 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;

(6) Incapacity means incapable of or lacking the ability to perform or carry out the usual duties of a law enforcement officer in accordance with the standards established by the commission due to physical, mental, or emotional factors. Incapacity does not exist if a law enforcement officer remains employed as a law enforcement officer, including employment as a law enforcement officer in a restricted or limited-duty status;

(7) Law enforcement agency means the police department or the town marshal in incorporated municipalities, the office of sheriff in unincorporated areas, and the Nebraska State Patrol;

(8)(a) Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the state or any political subdivision of the state for more than one hundred hours per year and is authorized by law to make arrests and includes, but is not limited to:

(i) A full-time or part-time member of the Nebraska State Patrol;

(ii) A county sheriff;

(iii) A full-time, part-time, or reserve employee of a county sheriff's office;

(iv) A full-time, part-time, or reserve employee of a municipal or village police agency;

(v) A full-time or part-time Game and Parks Commission conservation officer;

(vi) A full-time or part-time deputy state sheriff; or

(vii) A full-time employee of an organized and paid fire department of any city of the metropolitan class who is an authorized arson investigator and whose duties consist of determining the cause, origin, and circumstances of fires or explosions while on duty in the course of an investigation;

(b) Law enforcement officer does not include employees of the Department of Correctional Services, probation officers under the Nebraska Probation System, parole officers appointed by the Director of Supervision and Services of the Division of Parole Supervision, or employees of the Department of Revenue under section 77-366; and

(c) A law enforcement officer shall possess a valid law enforcement officer certificate or diploma, as established by the council, in order to be vested with the authority of this section, but this subdivision does not prohibit an individual from receiving a conditional appointment as an officer pursuant to subsection (2) of section 81-1414;

(9) Training academy means the training center or such other council-approved law enforcement training facility operated and maintained by a law enforcement agency which offers certification training that meets or exceeds the certification training curriculum of the training center;

(10) Training center means the Nebraska Law Enforcement Training Center; and

(11) Training school means a public or private institution of higher education, including the University of Nebraska, the Nebraska state colleges, and the community colleges of this state, that offers training in a council-approved pre-certification course.

**Source:** Laws 1969, c. 773, § 1, p. 2925; Laws 1971, LB 929, § 1; Laws 1979, LB 565, § 1; Laws 1980, LB 834, § 63; Laws 1981, LB 205, § 3; Laws 1986, LB 529, § 53; Laws 1996, LB 1055, § 11; Laws 1999, LB 36, § 38; Laws 1999, LB 205, § 1; Laws 2000, LB 994, § 2; Laws 2007, LB334, § 105; Laws 2012, LB817, § 5; Laws 2013, LB538, § 1; Laws 2018, LB841, § 14.  
Effective date July 19, 2018.

## (b) COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

### **81-1415 Commission, defined.**

As used in sections 81-1415 to 81-1426.01 and 81-1429.03, unless the context otherwise requires: Commission means the Nebraska Commission on Law Enforcement and Criminal Justice.

**Source:** Laws 1969, c. 774, § 1, p. 2932; Laws 2015, LB605, § 84; Laws 2016, LB843, § 3.

### **81-1416 Nebraska Commission on Law Enforcement and Criminal Justice; created; purpose.**

There is hereby created the Nebraska Commission on Law Enforcement and Criminal Justice. The commission shall educate the community at large to the problems encountered by law enforcement authorities, promote respect for law and encourage community involvement in the administration of criminal justice. The commission shall be an agency of the state, and the exercise by the commission of the powers conferred by the provisions of sections 81-1415 to 81-1426.01 and 81-1429.03 shall be deemed to be an essential governmental function of the state.

**Source:** Laws 1969, c. 774, § 2, p. 2932; Laws 2015, LB605, § 85; Laws 2016, LB843, § 4.

### **81-1417 Commission; members; qualifications; appointment; terms; special committee.**

(1) The Nebraska Commission on Law Enforcement and Criminal Justice shall consist of nineteen members. The membership shall include the Governor,

the Attorney General, the Superintendent of Law Enforcement and Public Safety, the Director of Correctional Services, the chief of police or director of public safety of a city of more than two hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the chief of police or director of public safety of a city of two hundred thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a county sheriff, a county attorney, a county commissioner, a mayor or city manager, a person involved with the control or prevention of juvenile delinquency, the chairperson of the Nebraska Police Standards Advisory Council, the chairperson of the Nebraska Coalition for Juvenile Justice, and six members, at least one of whom shall be a woman, from the public at large. The seven members of the council shall also be considered members of the commission acting as a special committee of the commission with limited powers and duties. A member of the commission may serve concurrently as a member of the council.

(2) The Governor may increase the membership of the commission at any time if such increase is necessary to comply with the provisions of any federal act providing funds for law enforcement or delinquency prevention purposes. Such members of the commission appointed by the Governor shall serve for terms of six years from January 1 next succeeding their appointments.

(3) Except for the Governor, the Attorney General, the Superintendent of Law Enforcement and Public Safety, the Director of Correctional Services, the chairperson of the Nebraska Police Standards Advisory Council, and the chairperson of the Nebraska Coalition for Juvenile Justice, the members of the commission shall be appointed by the Governor. The membership of the commission shall represent varying geographic areas and large and small governmental subdivisions.

**Source:** Laws 1969, c. 774, § 3, p. 2932; Laws 1994, LB 971, § 11; Laws 2002, LB 93, § 24; Laws 2013, LB561, § 63; Laws 2017, LB113, § 57.

#### **81-1423 Commission; powers; duties.**

The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426.01 and 81-1429.03;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written approval of the Director of Communications of the office of Chief Information Officer;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426.01 and 81-1429.03 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426.01 and 81-1429.03, except that no activities or transfers or expenditures of funds available to the commission shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee and the Jail Standards Board; and

(16) Do all things necessary to carry out sections 81-1843 to 81-1851.

**Source:** Laws 1969, c. 774, § 9, p. 2934; Laws 1971, LB 225, § 1; Laws 1975, LB 427, § 20; Laws 1978, LB 713, § 27; Laws 1979, LB 412, § 11; Laws 1979, LB 322, § 57; Laws 1981, LB 477, § 7; Laws 1981, LB 545, § 36; Laws 1981, LB 328, § 1; Laws 1986, LB 540, § 1; Laws 1994, LB 971, § 15; Laws 2003, LB 46, § 16; Laws 2004, LB 270, § 4; Laws 2005, LB 538, § 21; Laws 2006, LB 921, § 10; Laws 2011, LB390, § 18; Laws 2015, LB605, § 86; Laws 2016, LB843, § 5.

#### Cross References

**Crime victim's reparations**, see Chapter 81, article 18.

**Jail Standards Board**, see sections 83-4,124 to 83-4,134.

### **81-1425 Executive director; powers; duties.**

The executive director of the commission shall:



(1) Supervise and be responsible for the administration of the policies established by the commission;

(2) Establish a Jail Standards subdivision and a Community Corrections Division within the commission and establish, consolidate, or abolish any administrative subdivision within the commission and appoint and remove for cause the heads thereof, and delegate appropriate powers and duties to them;

(3) Establish and administer projects and programs for the operation of the commission;

(4) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(5) Make rules and regulations for the management and the administration of policies of the commission and the conduct of employees under his or her jurisdiction;

(6) Collect, develop, maintain, and analyze statistical information, records, and reports as the commission may determine relevant to its functions, including, but not limited to, the statistical information set forth in section 47-627;

(7) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(8) Execute and carry out the provisions of all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons;

(9) Perform such additional duties as may be assigned to him or her by the commission, by the chairperson of the commission, or by law;

(10) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center;

(11) Appoint and remove for cause the director of the Office of Violence Prevention;

(12) Subpoena witnesses and documents, files, internal investigation materials, administrative files, records, memoranda, reports, personnel records, disciplinary histories, or any materials the executive director determines to be relevant, relating to law enforcement officer certification revocation, from the Nebraska State Patrol; and

(13) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 774, § 11, p. 2935; Laws 1981, LB 328, § 2; Laws 2000, LB 1008, § 3; Laws 2003, LB 46, § 17; Laws 2005, LB 538, § 22; Laws 2011, LB390, § 19; Laws 2018, LB791, § 4.  
Effective date April 24, 2018.

**81-1426.01 County Justice Reinvestment Grant Program; created; grant recipient; duties; report.**

(1) There is created a separate and distinct budgetary program within the commission to be known as the County Justice Reinvestment Grant Program. Funding shall be used to provide grants to counties to help offset jail costs. It is the intent of the Legislature to appropriate five hundred thousand dollars to the County Justice Reinvestment Grant Program.

(2) The annual General Fund appropriation to the County Justice Reinvestment Grant Program shall be apportioned to the counties as grants in accor-

dance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number per county of individuals incarcerated in jails and the total capacity of jails.

(3) Funds provided to counties under the County Justice Reinvestment Grant Program shall be used exclusively to assist counties in the event that their average daily jail population increases after August 30, 2015. In distributing funds provided under the County Justice Reinvestment Grant Program, counties shall demonstrate to the commission that their average daily jail population increased, using data to pinpoint the contributing factors, as a result of the implementation of Laws 2015, LB605. The commission shall grant funds to counties which have an increase in population compared to the average daily jail population of the preceding three fiscal years. In calculating the average daily jail population, counties shall only include post-adjudication inmates who are serving sentences or inmates serving custodial sanctions due to probation violations. Counties may apply for grants one year after August 30, 2015.

(4) No funds appropriated or distributed under the County Justice Reinvestment Grant Program shall be used for the construction of secure detention facilities, secure treatment facilities, secure confinement facilities, or county jails. Grants received under this section shall not be used for capital construction or the lease or acquisition of facilities. Any funds appropriated to the County Justice Reinvestment Grant Program to be distributed to counties under this section shall be retained by the commission to be distributed in the form of grants in the following fiscal year.

(5) In distributing funds provided under the County Justice Reinvestment Grant Program, recipients shall prioritize use of the funds for programs, services, and approaches that reduce jail populations and costs.

(6) Any county receiving grants under the County Justice Reinvestment Grant Program shall submit annual information electronically to the commission as required by rules and regulations adopted and promulgated by the commission. The information shall include, but not be limited to, the objective sought for the grant and estimated savings and reduction in jail inmates.

(7) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for grants appropriated under the County Justice Reinvestment Grant Program. The report shall include, but not be limited to, the information listed under subsection (6) of this section. The report submitted to the Legislature shall be submitted electronically.

(8) The commission shall adopt and promulgate rules and regulations to implement this section.

**Source:** Laws 2015, LB605, § 87.

**81-1429.01 Crimes Against Children Fund; created; use; investment; termination.**

There is hereby created the Crimes Against Children Fund. The fund shall be appropriated by the Legislature and administered by the Nebraska Commission on Law Enforcement and Criminal Justice for the purpose of reducing the expenses incurred by county attorneys in consulting with and retaining expert witnesses and other costs in the investigation and prosecution of crimes against 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. The fund terminates on July 19, 2018, and the State Treasurer shall transfer any money in the fund on such date to the General Fund.

**Source:** Laws 1990, LB 1246, § 8; Laws 1994, LB 1066, § 111; Laws 2018, LB198, § 1.  
Effective date July 19, 2018.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1429.02 Human Trafficking Victim Assistance Fund; created; use; investment.**

The Human Trafficking Victim Assistance Fund is created. The fund shall contain 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. The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. All money credited to such fund shall be used to support care, treatment, and other services for victims of human trafficking and commercial sexual exploitation of a child. 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, LB294, § 20.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-1429.03 Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements; Sexual Assault Payment Program; administrator; duties; Sexual Assault Payment Program Cash Fund; created; use; investment.**

(1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid from the Sexual Assault Payment Program Cash Fund. A report of a forensic medical examination shall not be remitted to the patient or his or her insurance for payment.

(2) Except as provided under section 81-2010, all forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society.

(3) The full out-of-pocket cost or expense to be paid from the Sexual Assault Payment Program Cash Fund for a forensic medical examination described in subsection (1) of this section shall include:

- (a) An examiner's fee for:
  - (i) Examination of physical trauma;
  - (ii) Determination of penetration or force;
  - (iii) Patient interview; and

(iv) Collection and evaluation of evidence;

(b) An examination facility fee for the:

(i) Emergency room, clinic room, office room, or child advocacy center; and

(ii) Pelvic tray and other medically required supplies; and

(c) The laboratory fees for collection and processing of specimens for criminal evidence, the determination of the presence of any sexually transmitted disease, and pregnancy testing.

(4) There is established within the Department of Justice, under the direction of the Attorney General, the position of administrator for the Sexual Assault Payment Program. The purpose of the program and the responsibilities of the administrator shall be to coordinate the distribution of forensic medical examination kits to health care providers at no cost to the providers, oversee forensic medical examination training throughout the state, and coordinate payments from the Sexual Assault Payment Program Cash Fund.

(5) The Sexual Assault Payment Program Cash Fund is created. The fund shall be administered by the commission. The fund shall consist of any money appropriated to it by the Legislature and any money received by the commission for the program, including federal and other public and private funds. The fund shall be used for the payment of the full out-of-pocket costs or expenses for forensic medical examinations pursuant to subsection (3) of this section, for the purpose set forth in subsection (4) of this section, and for the purchase of forensic medical examination kits. The fund shall be used to pay only those charges determined by the commission to be reasonable and fair. The fund shall be used to pay up to two hundred dollars for the examiner's fee and up to three hundred dollars for the examination facility fee. The examiner and facility shall provide additional documentation as determined by the commission for payment of charges in excess of such amounts. The fund may also be used to facilitate programs that reduce or prevent the crimes of domestic violence, dating violence, sexual assault, stalking, child abuse, child sexual assault, human trafficking, labor trafficking, or sex trafficking or that enhance the safety of victims of such crimes. 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 1996, LB 1213, § 2; Laws 2001, LB 432, § 13; R.S.1943, (2014), § 81-2010.03; Laws 2016, LB843, § 2.

#### Cross References

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**Primary investigating law enforcement agency**, determination, see section 13-608.

### (c) HUMAN TRAFFICKING

**81-1430 Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.**

(1) A task force is hereby established within the Nebraska Commission on Law Enforcement and Criminal Justice for the purposes of investigating and studying human trafficking, the methods for advertising human trafficking services, and the victimization of individuals coerced to participate in human trafficking.

(2) The task force shall examine the extent to which human trafficking is prevalent in this state, the scope of efforts being taken to prevent human trafficking from occurring, and the services available to victims of human trafficking in this state. The task force shall utilize information and research available from the Innocence Lost National Initiative. The task force shall research and recommend a model of rehabilitative services for victims of human trafficking that includes input from the areas of law enforcement, social services, the legal profession, the judiciary, mental health, and immigration. The task force shall also investigate the limitations upon victims who wish to come forward and seek medical attention; investigate the potential to stop human trafficking; and investigate the potential to promote recovery, to protect families and children who may be profoundly impacted by such abuse, and to save lives.

(3)(a) The Department of Labor shall work with the task force to develop or select informational posters for placement around the state. The posters shall be in English, Spanish, and any other language deemed appropriate by the task force. The posters shall include a toll-free telephone number a person may call for assistance, preferably the National Human Trafficking Resource Center Hotline (888)373-7888.

(b) Posters shall be placed in rest stops and strip clubs. The task force shall work with local businesses and nonprofit entities associated with the prevention of human trafficking to voluntarily place additional signs in high schools, postsecondary educational institutions, gas stations, hotels, hospitals, health care clinics, urgent care centers, airports, train stations, bus stations, and other locations around the state deemed appropriate by the task force.

(4) The task force shall consist of the following members:

(a) The Attorney General or his or her designee;

(b) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(c) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(d) The Director of Correctional Services or his or her designee;

(e) The chief of police or director of public safety of a city of two hundred thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;

(f) The chief of police or director of public safety of a city of less than two hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;

(g) A county sheriff;

(h) A county attorney;

(i) A county commissioner;

(j) A mayor or city manager;

(k) A person involved with the control or prevention of juvenile delinquency;

(l) A person involved with the control or prevention of child abuse;

(m) The Commissioner of Education or his or her designee;

(n) The director of the Commission on Latino-Americans or his or her designee; and

(o) Six members, at least three of whom shall be women, from the public at large.

(5) The Governor shall appoint the members of the task force listed in subdivisions (4)(e) through (l) and (o) of this section for terms as provided in subsection (6) of this section. The membership of the task force shall represent varying geographic areas and large and small political subdivisions. One member from the public at large shall be a professional representing child welfare, and one member of the public at large shall represent juvenile pretrial diversion programs.

(6) The members of the task force appointed by the Governor shall serve six-year terms, except that of the members first appointed, four shall serve initial two-year terms, four shall serve initial four-year terms, and six shall serve initial six-year terms from January 1 next succeeding their appointments. Thereafter, all members shall serve six-year terms. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(7) No member shall serve beyond the time when he or she holds the office, employment, or status by reason of which he or she was initially eligible for appointment. Any member of the task force appointed by the Governor may be removed from the task force for cause upon notice and an opportunity to be heard at a public hearing. One of the causes for removal shall be absence from three regularly scheduled meetings of the task force during any six-month period when the member has failed to advise the task force in advance of such meeting that he or she will be absent and stating a reason therefor.

(8) The chairperson of the task force shall be designated by the Governor to serve at the pleasure of the Governor. The chairperson shall be the chief executive officer of the task force but may delegate such of his or her duties to other members of the task force as may be authorized by the task force.

(9) Notwithstanding any provision of law, ordinance, or charter provision to the contrary, membership on the task force shall not disqualify any member from holding any other public office or employment or cause the forfeiture thereof.

(10) The members of the task force shall serve on the task force without compensation, but they shall be entitled to receive reimbursement for any actual expenses incurred as necessary incident to such service as provided in sections 81-1174 to 81-1177.

(11) Eleven members of the task force shall constitute a quorum for the transaction of any business or the exercise of any power of the task force. The task force shall have the power to act by a majority of the members present at any meeting at which a quorum is in attendance.

(12) Every July 1 and December 1, the task force shall report electronically to the Clerk of the Legislature the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the report with the clerk.

**Source:** Laws 2012, LB1145, § 2; Laws 2013, LB222, § 37; Laws 2013, LB255, § 12; Laws 2017, LB113, § 58.

## (e) OFFICE OF VIOLENCE PREVENTION

**81-1450 Office of Violence Prevention; director; administration and supervision; responsibilities; report; advisory council; meetings; duties.**

(1) The Office of Violence Prevention and its director shall be administered and supervised, respectively, by the Nebraska Commission on Law Enforcement and Criminal Justice. Among its responsibilities, the Office of Violence Prevention and its director shall be responsible for developing, fostering, promoting, and assessing violence prevention programs. To accomplish this mission, the duties of the director shall include, but not be limited to, program fundraising, program evaluation, coordination of programs, and assistance with the administration and distribution of funds to violence prevention programs. The office shall file with the Clerk of the Legislature an annual report on or before November 1 of each year regarding its activities to develop, foster, promote, and assess violence prevention programs, the status of program fundraising, evaluation, and coordination, and the administration and distribution of funds to programs. The report shall be submitted electronically.

(2) The advisory council to the Office of Violence Prevention shall meet at least quarterly. Among its responsibilities, the advisory council shall recommend to the commission rules and regulations regarding program fundraising, program evaluation, coordination of programs, and the criteria used to assess and award funds to violence prevention programs. Priority for funding shall be given to communities and organizations seeking to implement violence prevention programs which appear to have the greatest benefit to the state and which have, as goals, the reduction of street and gang violence, the reduction of homicides and injuries caused by firearms, and the creation of youth employment opportunities in high-crime areas. The duties of the advisory council shall include, but not be limited to, receiving applications for violence prevention funds, evaluating such applications, and making recommendations to the commission regarding the merits of each application and the amount of any funds that should be awarded. If any funds are awarded to a violence prevention program, the advisory council shall continuously monitor how such funds are being used by the program, conduct periodic evaluations of such programs, assess the progress and success regarding the stated goals of each program awarded funds, and recommend to the commission any modification, continuation, or discontinuation of funding.

**Source:** Laws 2009, LB63, § 40; Laws 2015, LB167, § 1.

## (f) BODY-WORN CAMERAS

**81-1452 Body-worn cameras; terms, defined.**

For purposes of sections 81-1452 to 81-1454, unless the context otherwise requires:

(1) Body-worn camera means a device worn by a peace officer in uniform which has the capability to record both audio and video of an interaction between a peace officer and a member of the public but does not include any device used by a plain clothes officer;

(2) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

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

(4) Peace officer means any officer or employee of a law enforcement agency authorized by law to make arrests.

**Source:** Laws 2016, LB1000, § 1.

**81-1453 Body-worn cameras; model policy; development and distribution; contents; law enforcement agency; duties.**

(1) On or before December 1, 2016, the commission shall develop and distribute a model body-worn camera policy that includes the procedures and provisions required by section 81-1454. Any law enforcement agency required to adopt a policy under this section that does not develop and adopt its own policy shall adopt the model body-worn camera policy developed by the commission.

(2)(a) Any law enforcement agency which uses body-worn cameras as of July 21, 2016, shall, on or before January 1, 2017, adopt a written body-worn camera policy. Such policy shall include procedures and provisions in conformance with the minimum standards set forth in the model body-worn camera policy developed by the commission and may include any other procedures and provisions the law enforcement agency deems appropriate.

(b) Beginning January 1, 2017, any law enforcement agency which uses body-worn cameras shall, prior to commencing such use, adopt a written body-worn camera policy. Such policy shall include procedures and provisions in conformance with the minimum standards set forth in the model body-worn camera policy developed by the commission and may include any other procedures and provisions the law enforcement agency deems appropriate.

(3) The head of a law enforcement agency required to adopt a policy under this section shall provide a copy of such policy to the commission within three months of such policy's adoption.

(4) On or before January 1, 2018, and each January 1 thereafter, when any law enforcement agency required to adopt a policy under this section has made any change to its policy in the preceding year, the head of such agency shall provide an updated copy of such policy to the commission.

**Source:** Laws 2016, LB1000, § 2.

**81-1454 Body-worn camera policy; contents.**

A body-worn camera policy required by section 81-1453 shall include provisions which govern the use of body-worn cameras by peace officers and the retention and disposition of recordings created with such cameras by law enforcement agencies. Such body-worn camera policy shall include, but not be limited to:

(1) A requirement that training be provided to any peace officer who will use a body-worn camera and to any other employee who will come into contact with video or audio data recorded by a body-worn camera;



(2) A requirement that recordings created by body-worn cameras shall be retained for a minimum period of ninety days from the date of recording. Such recordings shall be retained for more than ninety days if required by the following circumstances:

(a) Upon notice to the law enforcement agency of a criminal or civil court proceeding in which the recording may have evidentiary value or in which the recording is otherwise involved, the recording shall be retained until final judgment has been entered in the proceeding;

(b) Upon notice to the law enforcement agency of a disciplinary proceeding against an employee of the agency in which the recording may have evidentiary value or in which the recording is otherwise involved, the recording shall be retained until a final determination has been made in such proceeding; and

(c) If the recording is part of a criminal investigation that has not resulted in an arrest or prosecution, the recording shall be retained until the investigation is officially closed or suspended; and

(3) A procedure governing the destruction of recordings after the retention period described in subdivision (2) of this section has elapsed.

**Source:** Laws 2016, LB1000, § 3.

#### (g) EYEWITNESS SUSPECT IDENTIFICATION

**81-1455 Eyewitness suspect identification; written policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; duties.**

(1) On or before January 1, 2017, the Nebraska State Patrol, each county sheriff, each city or village police department, and any other law enforcement agency in this state which conducts eyewitness suspect identifications shall adopt a written policy on eyewitness suspect identifications and provide a copy of such policy to the Nebraska Commission on Law Enforcement and Criminal Justice. The policy shall include the minimum standards developed by the commission relating to the following: (a) Standards which describe the administration of a lineup, (b) procedures governing the instructions given by a peace officer to an eyewitness, and (c) procedures for documentation of the eyewitness's level of certainty of an identification.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice shall distribute a standard model written policy on suspect identification by eyewitnesses. Any law enforcement agency described in subsection (1) of this section which fails to adopt its own policy as required by this section shall adopt the commission's standard model written policy.

**Source:** Laws 2016, LB1000, § 4.

#### (h) EMPLOYMENT RECORDS

**81-1456 Employment of law enforcement officer; submit personnel change in status form; record; contents; report of termination or resignation in lieu of termination.**

(1) The chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of a law enforcement agency or an agency employing a law enforcement officer shall submit a personnel change in status form as approved by the Nebraska Police Standards Advisory Council to

the director of the Nebraska Law Enforcement Training Center within seven calendar days after the date a law enforcement officer is hired by the agency or leaves employment with the agency.

(2) Each law enforcement agency or agency employing a law enforcement officer shall maintain a record regarding the reason or reasons for, and circumstances surrounding, a separation of service for each law enforcement officer employed by that agency. Such record shall be retained for five years following a law enforcement officer's separation from the agency.

(3) Each law enforcement agency or agency employing a law enforcement officer shall maintain any and all records of officer conduct which could constitute grounds for revocation or suspension of a law enforcement certification by the Nebraska Commission on Law Enforcement and Criminal Justice. Such record shall include any and all records of conduct which could constitute: (a) Incompetence; (b) neglect of duty; (c) incapacity; (d) dishonesty; (e) a felony violation of state or federal law; (f) a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer; or (g) a violation of the officer's oath of office, code of ethics, or statutory duties. Such record shall be retained for the duration of the law enforcement officer's employment with the agency and for ten years following his or her separation from the agency.

(4) The chief of police, sheriff, Superintendent of Law Enforcement and Public Safety, or the head administrator of a law enforcement agency or an agency employing a law enforcement officer shall make a report to the Nebraska Commission on Law Enforcement and Criminal Justice of any law enforcement officer who is terminated from employment or allowed to resign in lieu of termination for conduct that could constitute: (a) Incompetence; (b) neglect of duty; (c) incapacity; (d) dishonesty; (e) a felony violation of state or federal law; (f) a misdemeanor violation of state or federal law, if the violation has a rational connection with the officer's fitness or capacity to serve as a law enforcement officer; or (g) a violation of the officer's oath of office, code of ethics, or statutory duties. The report shall include, but not be limited to, a summary of the allegations pertaining to the officer and identification of any witnesses relevant to the allegations, and shall be filed with the commission within thirty calendar days of the termination or resignation in lieu of termination.

(5) Failure to comply with this section shall constitute neglect of duty.

(6) For purposes of this section:

(a) Felony has the same meaning as in section 81-1401;

(b) Incapacity has the same meaning as in section 81-1401;

(c) Law enforcement agency has the same meaning as in section 81-1401; and

(d) Law enforcement officer has the same meaning as in section 81-1401.

**Source:** Laws 2018, LB791, § 1.

Effective date April 24, 2018.

**81-1457 Employment of law enforcement officer; waiver to prospective employer; contents; form; former employer; duties.**

(1) A person who is certified under section 81-1414 and who seeks employment as a law enforcement officer in this state shall provide a signed waiver to

the prospective employer upon a conditional offer of employment. The waiver must expressly allow the prospective employer to contact the person's former employer or employers and obtain from each copies of any records created under subsections (2) and (3) of section 81-1456. The prospective employer is responsible for providing the waiver to each former employer.

(2) The waiver required by this section shall be executed on a form provided by the Nebraska Commission on Law Enforcement and Criminal Justice to all agencies in this state that employ or administer oaths of office to law enforcement officers certified by the commission.

(3) Within ten calendar days after receipt of the waiver, a former employer shall provide the prospective employer, along with other information required or allowed to be provided by law, copies of any records created under subsections (2) and (3) of section 81-1456. The names and any identifying information in any records created under subsections (2) and (3) of this section of any individual, witness, or law enforcement officer or officers other than the person who signed the waiver shall be confidential and not disclosed to the prospective employer.

(4) A prospective employer shall not hire as a law enforcement officer a person to whom subsection (1) of this section applies unless the prospective employer receives, from each of the person's former employers, copies of any records created under subsections (2) and (3) of section 81-1456.

(5) A prospective employer shall not hire as a law enforcement officer a person to whom subsection (1) of this section applies if such person's former employer has provided notice to the Nebraska Commission on Law Enforcement and Criminal Justice that the person's separation from the former employer occurred under circumstances that may justify revocation of the person's certification unless the commission has reviewed the notification and issued a determination that the person shall retain such certification.

(6) For purposes of this section:

(a) Former employer means the law enforcement agency or other agency that currently employs or previously employed the person as a law enforcement officer;

(b) Incapacity has the same meaning as in section 81-1401;

(c) Law enforcement agency has the same meaning as in section 81-1401;

(d) Law enforcement officer has the same meaning as in section 81-1401; and

(e) Prospective employer means the law enforcement agency or other agency that is considering hiring the person as a law enforcement officer.

**Source:** Laws 2018, LB791, § 2.

Effective date April 24, 2018.

## ARTICLE 15

### ENVIRONMENTAL PROTECTION

#### (a) ENVIRONMENTAL PROTECTION ACT

Section

81-1504. Department; powers; duties.

81-1505. Council; rules and regulations; standards of air, land, and water quality.

81-1517. Political subdivision; permits; department; powers; evaluation and determination of terms and conditions; factors.

## Section

- 81-1518. Environmental Infrastructure Sustainability Fund; created; use; investment.  
 81-1519. Political subdivision; evaluation; application fee; costs; refund.  
 81-1520. Political subdivision; evaluation; fee schedule.  
 81-1531.01. Act, how construed.  
 81-1532. Act, how cited.

## (b) LITTER REDUCTION AND RECYCLING ACT

- 81-1558. Nebraska Litter Reduction and Recycling Fund; created; use; investment.

## (e) STORAGE OF HAZARDOUS SUBSTANCES

- 81-1575. Repealed. Laws 2016, LB712, § 4.  
 81-1576. Repealed. Laws 2016, LB712, § 4.  
 81-1577. Repealed. Laws 2016, LB712, § 4.  
 81-1577.01. Motor vehicle fuel storage tanks; aboveground tanks authorized.

## (k) WASTEWATER TREATMENT FACILITIES CONSTRUCTION ASSISTANCE ACT

- 81-15,149. Terms, defined.  
 81-15,150. Federal grants; director; powers.  
 81-15,151. Wastewater Treatment Facilities Construction Loan Fund; transfers authorized; Construction Administration Fund; created; use; investment.  
 81-15,153. Department; powers and duties.  
 81-15,154. Categories of loan eligibility; eligible items.  
 81-15,155. Loans to municipalities or counties; conditions.  
 81-15,156. Loan terms.

## (l) WASTE REDUCTION AND RECYCLING

- 81-15,158.01. Act, how cited.  
 81-15,159.01. Department of Environmental Quality; conduct study; establish advisory committee; members; department powers; report.  
 81-15,160. Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.

## (n) NEBRASKA ENVIRONMENTAL TRUST ACT

- 81-15,175. Fund allocations; board; powers and duties; grant award to Water Resources Cash Fund; payments; legislative intent; additional grant; additional reporting.

## (t) PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM CONTRACTORS CERTIFICATION AND SYSTEM REGISTRATION ACT

- 81-15,237. Purposes of act.  
 81-15,247. Rules and regulations.  
 81-15,248.01. Fee schedule.

## (a) ENVIRONMENTAL PROTECTION ACT

**81-1504 Department; powers; duties.**

The department shall have and may exercise the following powers and duties:

(1) To exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts;

(2) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the air, waters, and land of the state;

(3) To advise and consult, cooperate, and contract with other agencies of the state, the federal government, and other states, with interstate agencies, and

with affected groups, political subdivisions, and industries in furtherance of the purposes of the acts;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(5) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air, land, and water pollution and causes and effects, prevention, control, and abatement of such pollution as it may deem advisable and necessary for the discharge of its duties under the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act, using its own staff or private research organizations under contract;

(6) To collect and disseminate information and conduct educational and training programs relating to air, water, and land pollution and the prevention, control, and abatement of such pollution;

(7) To issue, modify, or revoke orders (a) prohibiting or abating discharges of wastes into the air, waters, or land of the state and (b) requiring the construction of new disposal systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control, or abate pollution;

(8) To administer state grants to political subdivisions for solid waste disposal facilities and for the construction of sewage treatment works and facilities to dispose of water treatment plant wastes;

(9) To (a) hold such hearings and give notice thereof, (b) issue such subpoenas requiring the attendance of such witnesses and the production of such evidence, (c) administer such oaths, and (d) take such testimony as the director deems necessary, and any of these powers may be exercised on behalf of the director by a hearing officer designated by the director;

(10) To require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(11) To issue, continue in effect, revoke, modify, or deny permits, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, (a) to prevent, control, or abate pollution, (b) for the discharge of wastes into the air, land, or waters of the state, and (c) for the installation, modification, or operation of disposal systems or any parts thereof;

(12) To require proper maintenance and operation of disposal systems;

(13) To exercise all incidental powers necessary to carry out the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, mining and land quality, and solid wastes which shall be

administered by full-time salaried bureau, division, or section chiefs and to delegate and assign to each such bureau, division, or section and its officers and employees the duties and powers granted to the department for the enforcement of Chapter 81, article 15, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and the standards, rules, and regulations adopted pursuant thereto;

(15)(a) To require access to existing and available records relating to (i) emissions or discharges which cause or contribute to air, land, or water pollution or (ii) the monitoring of such emissions or discharges; and

(b) To require, for purposes of developing or assisting the development of any regulation or enforcing any of the provisions of the Environmental Protection Act which pertain to hazardous waste, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste, upon request of any officer, employee, or representative of the department, to furnish information relating to such waste and any permit involved. Such person shall have access at all reasonable times to a copy of all results relating to such waste;

(16) To obtain such scientific, technical, administrative, and operational services including laboratory facilities, by contract or otherwise, as the director deems necessary;

(17) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(18) To encourage local units of government to handle air, land, and water pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefor;

(19) To consult with any person proposing to construct, install, or otherwise acquire an air, land, or water contaminant source or a device or system for control of such source, upon request of such person, concerning the efficacy of such device or system or concerning the air, land, or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, rules and regulations in force pursuant to the acts, or any other provision of law;

(20) To require all persons engaged or desiring to engage in operations which result or which may result in air, water, or land pollution to secure a permit prior to installation or operation or continued operation;

(21) To enter and inspect, during reasonable hours, any building or place, except a building designed for and used exclusively for a private residence;

(22) To receive or initiate complaints of air, water, or land pollution, hold hearings in connection with air, water, or land pollution, and institute legal proceedings in the name of the state for the control or prevention of air, water, or land pollution, and for the recovery of penalties, in accordance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(23) To delegate, by contract with governmental subdivisions which have adopted local air, water, or land pollution control programs approved by the council, the enforcement of state-adopted air, water, or land pollution control

regulations within a specified region surrounding the jurisdictional area of the governmental subdivisions. Prosecutions commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(24) To conduct tests and take samples of air, water, or land contaminants, fuel, process materials, or any other substance which affects or may affect discharges or emissions of air, water, or land contaminants from any source, giving the owner or operator a receipt for the sample obtained;

(25) To develop and enforce compliance schedules, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, to prevent, control, or abate pollution;

(26) To employ the Governor's Keep Nebraska Beautiful Committee for such special occasions and projects as the department may decide. Reimbursement of the committee shall be made from state and appropriate federal matching funds for each assignment of work by the department as provided in sections 81-1174 to 81-1177;

(27) To provide, to the extent determined by the council to be necessary and practicable, for areawide, selective, and periodic inspection and testing of motor vehicles to secure compliance with applicable exhaust emission standards for a fee not to exceed five dollars to offset the cost of inspection;

(28) To enforce, when it is not feasible to prescribe or enforce any emission standard for control of air pollutants, the use of a design, equipment, a work practice, an operational standard, or a combination thereof, adequate to protect the public health from such pollutant or pollutants with an ample margin of safety;

(29) To establish the position of public advocate to be located within the department to assist and educate the public on departmental programs and to carry out all duties of the ombudsman as provided in the Clean Air Act, as amended, 42 U.S.C. 7661f;

(30) Under such conditions as it may prescribe for the review, recommendations, and written approval of the director, to require the submission of such plans, specifications, and other information as it deems necessary to carry out the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act or to carry out the rules and regulations adopted pursuant to the acts. When deemed necessary by the director, the plans and specifications shall be prepared and submitted by a professional engineer licensed to practice in Nebraska;

(31) To carry out the provisions of the Petroleum Products and Hazardous Substances Storage and Handling Act;

(32) To consider the risk to human health and safety and to the environment in evaluating and approving plans for remedial action; and

(33) To evaluate permits proposed to be issued to any political subdivision under the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., as provided in section 81-1517.

**Source:** Laws 1971, LB 939, § 4; Laws 1972, LB 1435, § 3; Laws 1973, LB 254, § 1; Laws 1974, LB 1029, § 2; Laws 1979, LB 342, § 1; Laws 1980, LB 853, § 2; Laws 1981, LB 204, § 196; Laws 1983,

LB 356, § 4; Laws 1984, LB 1078, § 2; Laws 1986, LB 217, § 15; Laws 1992, LB 1257, § 78; Laws 1994, LB 570, § 6; Laws 1996, LB 1226, § 13; Laws 1997, LB 622, § 124; Laws 1998, LB 1209, § 20; Laws 2015, LB413, § 1.

**Cross References**

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

**Petroleum Products and Hazardous Substances Storage and Handling Act**, see section 81-15,117.

**81-1505 Council; rules and regulations; standards of air, land, and water quality.**

(1) In order to carry out the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act, the council shall adopt and promulgate rules and regulations which shall set standards of air, water, and land quality to be applicable to the air, waters, and land of this state or portions thereof. Such standards of quality shall be such as to protect the public health and welfare. The council shall classify air, water, and land contaminant sources according to levels and types of discharges, emissions, and other characteristics which relate to air, water, and land pollution and may require reporting for any such class or classes. Such classifications and standards made pursuant to this section may be made for application to the state as a whole or to any designated area of the state and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Such standards and classifications may be amended as determined necessary by the council.

(2) In adopting the classifications of waters and water quality standards, the primary purpose for such classifications and standards shall be to protect the public health and welfare and the council shall give consideration to:

(a) The size, depth, surface area, or underground area covered, the volume, direction, and rate of flow, stream gradient, and temperature of the water;

(b) The character of the area affected by such classification or standards, its peculiar suitability for particular purposes, conserving the value of the area, and encouraging the most appropriate use of lands within such area for domestic, agricultural, industrial, recreational, and aquatic life purposes;

(c) The uses which have been made, are being made, or are likely to be made, of such waters for agricultural, transportation, domestic, and industrial consumption, for fishing and aquatic culture, for the disposal of sewage, industrial waste, and other wastes, or other uses within this state and, at the discretion of the council, any such uses in another state on interstate waters flowing through or originating in this state;

(d) The extent of present pollution or contamination of such waters which has already occurred or resulted from past discharges therein; and

(e) Procedures pursuant to section 401 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., for certification by the department of activities requiring a federal license or permit which may result in a discharge.

(3) In adopting effluent limitations or prohibitions, the council shall give consideration to the type, class, or category of discharges and the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable or other waters of



the state, including schedules of compliance, best practicable control technology, and best available control technology.

(4) In adopting standards of performance, the council shall give consideration to the discharge of pollutants which reflect the greatest degree of effluent reduction which the council determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(5) In adopting toxic pollutant standards and limitations, the council shall give consideration to the combinations of pollutants, the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms.

(6) In adopting pretreatment standards, the council shall give consideration to the prohibitions or limitations to noncompatible pollutants, prohibitions against the passage through a publicly owned treatment works of pollutants which would cause interference with or obstruction to the operation of publicly owned treatment works, damage to such works, and the prevention of the discharge of pollutants therefrom which are inadequately treated.

(7) In adopting treatment standards, the council shall give consideration to providing for processes to which wastewater shall be subjected in a publicly owned wastewater treatment works in order to make such wastewater suitable for subsequent use.

(8) In adopting regulations pertaining to the disposal of domestic and industrial liquid wastes, the council shall give consideration to the minimum amount of biochemical oxygen demand, suspended solids, or equivalent in the case of industrial wastewaters, which must be removed from the wastewaters and the degree of disinfection necessary to meet water quality standards with respect to construction, installation, change of, alterations in, or additions to any wastewater treatment works or disposal systems, including issuance of permits and proper abandonment, and requirements necessary for proper operation and maintenance thereof.

(9)(a) The council shall adopt and promulgate rules and regulations for controlling mineral exploration holes and mineral production and injection wells. The rules and regulations shall include standards for the construction, operation, and abandonment of such holes and wells. The standards shall protect the public health and welfare and air, land, water, and subsurface resources so as to control, minimize, and eliminate hazards to humans, animals, and the environment. Consideration shall be given to:

(i) Area conditions such as suitability of location, geologic formations, topography, industry, agriculture, population density, wildlife, fish and other aquatic life, sites of archaeological and historical importance, mineral, land, and water resources, and the existing economic activities of the area including, but not limited to, agriculture, recreation, tourism, and industry;

(ii) A site-specific evaluation of the geologic and hydrologic suitability of the site and the injection, disposal, and production zones;

(iii) The quality of the existing ground water, the effects of exemption of the aquifer from any existing water quality standards, and requirements for restoration of the aquifer;

(iv) Standards for design and use of production facilities, which shall include, but not be limited to, all wells, pumping equipment, surface structures, and associated land required for operation of injection or production wells; and

(v) Conditions required for closure, abandonment, or restoration of mineral exploration holes, injection and production wells, and production facilities in order to protect the public health and welfare and air, land, water, and subsurface resources.

(b) The council shall establish fees for regulated activities and facilities and for permits for such activities and facilities. The fees shall be sufficient but shall not exceed the amount necessary to pay the department for the direct and indirect costs of evaluating, processing, and monitoring during and after operation of regulated facilities or performance of regulated activities.

(c) With respect to mineral production wells, the council shall adopt and promulgate rules and regulations which require restoration of air, land, water, and subsurface resources and require mineral production well permit applications to include a restoration plan for the air, land, water, and subsurface resources affected. Such rules and regulations may provide for issuance of a research and development permit which authorizes construction and operation of a pilot plant by the permittee for the purpose of demonstrating the permittee's ability to inject and restore in a manner which meets the standards required by this subsection and the rules and regulations.

The rules and regulations adopted and promulgated may also provide for issuance of a commercial permit after a finding by the department that the injection and restoration procedures authorized by the research and development permit have been successful in demonstrating the applicant's ability to inject and restore in a manner which meets the standards required by this subsection and the rules and regulations.

(d) For the purpose of this subsection, unless the context otherwise requires, restoration shall mean the employment, during and after an activity, of procedures reasonably designed to control, minimize, and eliminate hazards to humans, animals, and the environment, to protect the public health and welfare and air, land, water, and subsurface resources, and to return each resource to a quality of use consistent with the uses for which the resource was suitable prior to the activity.

(10) In adopting livestock waste control regulations, the council shall consider the discharge of livestock wastes into the waters of the state or onto land not owned by the livestock operator, conditions under which permits for such operations may be issued, including design, location, and proper management of such facilities, protection of ground water from such operations, and revocation, modification, or suspension of such permits for cause and all requirements of the Livestock Waste Management Act.

(11) In adopting regulations for the issuance of permits under the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the council shall consider when such permits shall be required and exemptions, application and filing requirements, terms and conditions affecting such permits, notice and public participation, duration and review of such permits, the evaluation provided for under section 81-1517, and monitoring, recording, and reporting under the system.

(12) The council shall adopt and promulgate rules and regulations for air pollution control which shall include:

(a) A construction permit program which requires the owner or operator of an air contaminant source to obtain a permit prior to construction. Application fees shall be according to section 81-1505.06;

(b) An operating permit program consistent with requirements of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and an operating permit program for minor sources of air pollution, which programs shall require permits for both new and existing sources;

(c) Provisions for operating permits to be issued after public notice, to be terminated, modified, or revoked for cause, and to be modified to incorporate new requirements;

(d) Provisions for applications to be on forms provided by the department and to contain information necessary to make a determination on the appropriateness of issuance or denial. The department shall make a completeness determination in a timely fashion and after such determination shall act on the application within time limits set by the council. Applications for operating permits shall include provisions for certification of compliance by the applicant;

(e) Requirements for operating permits which may include such conditions as necessary to protect public health and welfare, including, but not limited to (i) monitoring and reporting requirements on all sources subject to the permit, (ii) payment of annual fees sufficient to pay the reasonable direct and indirect costs of developing and administering the air quality permit program, (iii) retention of records, (iv) compliance with all air quality standards, (v) a permit term of no more than five years from date of issuance, (vi) any applicable schedule of compliance leading to compliance with air quality regulations, (vii) site access to the department for inspection of the facility and records, (viii) emission limits or control technology requirements, (ix) periodic compliance certification, and (x) other conditions necessary to carry out the purposes of the Environmental Protection Act. For purposes of this subsection, control technology shall mean a design, equipment, a work practice, an operational standard which may include a requirement for operator training or certification, or any combination thereof;

(f) Classification of air quality control regions;

(g) Standards for air quality that may be established based upon protection of public health and welfare, emission limitations established by the United States Environmental Protection Agency, and maximum achievable control technology standards for sources of toxic air pollutants. For purposes of this subdivision, maximum achievable control technology standards shall mean an emission limit or control technology standard which requires the maximum degree of emission reduction that the council, taking into consideration the cost of achieving such emission reduction, any health and environmental impacts not related to air quality, and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which the standard applies through application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which accomplish one or a combination of the following:

(i) Reduce the volume of or eliminate emissions of the pollutants through process changes, substitution of materials, or other modifications;

(ii) Enclose systems or processes to eliminate emissions; or

(iii) Collect, capture, or treat the pollutants when released from a process, stack, storage, or fugitive emission point;

(h) Restrictions on open burning and fugitive emissions;

(i) Provisions for issuance of general operating permits, after public notice, for sources with similar operating conditions and for revoking such general authority to specific permittees;

(j) Provisions for implementation of any emissions trading programs as defined by the department. Such programs shall be consistent with the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and administered through the operating permit program;

(k) A provision that operating permits will not be issued if the Environmental Protection Agency objects in a timely manner;

(l) Provisions for periodic reporting of emissions;

(m) Limitations on emissions from process operations, fuel-burning equipment, and incinerator emissions and such other restrictions on emissions as are necessary to protect the public health and welfare;

(n) Time schedules for compliance;

(o) Requirements for owner or operator testing and monitoring of emissions;

(p) Control technology requirements when it is not feasible to prescribe or enforce an emission standard; and

(q) Procedures and definitions necessary to carry out payment of the annual emission fee set in section 81-1505.04.

(13)(a) In adopting regulations for hazardous waste management, the council shall give consideration to generation of hazardous wastes, labeling practices, containers used, treatment, storage, collection, transportation including a manifest system, processing, resource recovery, and disposal of hazardous wastes. It shall consider the permitting, licensing, design and construction, and development and operational plans for hazardous waste treatment, storage, and disposal facilities, and conditions for licensing or permitting of hazardous waste treatment, storage, and disposal areas. It shall consider modification, suspension, or revocation of such licenses and permits, including requirements for waste analysis, site improvements, fire prevention, safety, security, restricted access, and covering and handling of hazardous liquids and materials. Licenses and permits for hazardous waste, treatment, storage, and disposal facilities shall not be issued until certification by the State Fire Marshal as to fire prevention and fire safety has been received by the department. The council shall further consider the need at treatment, storage, or disposal facilities for required equipment, communications and alarms, personnel training, and contingency plans for any emergencies that might arise and for a coordinator during such emergencies.

In addition the council shall give consideration to (i) ground water monitoring, (ii) use and management of containers and tanks, (iii) surface impoundments, (iv) waste piles, (v) land treatment, (vi) incinerators, (vii) chemical or biological treatment, (viii) landfills including the surveying thereof, and (ix) special requirements for ignitable, reactive, or incompatible wastes.

In considering closure and postclosure of hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would result in the owner or operator closing his or her facility so as to minimize the

need for future maintenance, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, postclosure escape of hazardous waste, hazardous waste constituents, and leachate to the ground water or surface waters, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, waste decomposition to the atmosphere. In considering corrective action for hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would require the owner or operator, or any previous owner or operator with actual knowledge of the presence of hazardous waste at the facility, to undertake corrective action or such other response measures necessary to protect human health or the environment for all releases of hazardous waste or hazardous constituents from any treatment, storage, or disposal facility or any solid waste management unit at such facility regardless of the time at which waste was placed in such unit.

Such regulations adopted pursuant to this subsection shall in all respects comply with the Environmental Protection Act and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(b) In adopting regulations for hazardous waste management, the council shall consider, in addition to criteria in subdivision (a) of this subsection, establishing criteria for (i) identifying hazardous waste including extraction procedures, toxicity, persistence, and degradability in nature, potential for accumulation in tissue, flammability or ignitability, corrosiveness, reactivity, and generation of pressure through decomposition, heat, or other means, and other hazardous characteristics, (ii) listing all materials it deems hazardous and which should be subject to regulation, and (iii) locating treatment, storage, or disposal facilities for such wastes. In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b)(i) of this subsection, no regulation shall be adopted without the approval of the State Fire Marshal.

(c) In adopting regulations for hazardous waste management, the council shall establish a schedule of fees to be paid to the director by licensees or permittees operating hazardous waste processing facilities or disposal areas on the basis of a monetary value per cubic foot or per pound of the hazardous wastes, sufficient but not exceeding the amount necessary to reimburse the department for the costs of monitoring such facilities or areas during and after operation of such facilities or areas. The licensees may assess a cost against persons using the facilities or areas. The director shall remit any money collected from fees paid to him or her to the State Treasurer who shall credit the entire amount thereof to the General Fund.

(d) In adopting regulations for solid waste disposal, the council shall consider storage, collection, transportation, processing, resource recovery, and disposal of solid waste, developmental and operational plans for solid waste disposal areas, conditions for permitting of solid waste disposal areas, modification, suspension, or revocation of such permits, regulations of operations of disposal areas, including site improvements, fire prevention, ground water protection, safety and restricted access, handling of liquid and hazardous materials, insect and rodent control, salvage operations, and the methods of disposing of accumulations of junk outside of solid waste disposal areas. Such regulations shall in all respects comply with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(14) In adopting regulations governing discharges or emissions of oil and other hazardous materials into the waters, in the air, or upon the land of the state, the council shall consider the requirements of the Integrated Solid Waste Management Act, methods for prevention of such discharges or emissions, and the responsibility of the discharger or emitter for cleanup, toxicity, degradability, and dispersal characteristics of the substance.

(15) In adopting regulations governing composting and composting sites, the council shall give consideration to:

(a) Approval of a proposed site by the local governing body, including the zoning authority, if any, prior to issuance of a permit by the department;

(b) Issuance of permits by the department for such composting operations, with conditions if necessary;

(c) Submission of construction and operational plans by the applicant for a permit to the department, with approval of such plans before issuance of such permit;

(d) A term of up to ten years for such permits;

(e) Renewal of permits if the operation has been in substantial compliance with composting regulations adopted pursuant to this subsection, permit conditions, and operational plans;

(f) Review by the department of materials to be composted, including chemical analysis when found by the department to be necessary;

(g) Inspections of such compost sites by the department. Operations out of compliance with composting regulations, permit conditions, or operational plans shall be given a reasonable time for voluntary compliance, and failure to do so within the specified time shall result in a hearing after notice is given, at which time the owner or operator shall appear and show cause why his or her permit should not be revoked;

(h) Special permits of the department for demonstration projects not to exceed six months;

(i) Exemptions from permits of the department; and

(j) The Integrated Solid Waste Management Act.

(16) Any person operating or responsible for the operation of air, water, or land contaminant sources of any class for which the rules and regulations of the council require reporting shall make reports containing information as may be required by the department concerning quality and quantity of discharges and emissions, location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of discharges and emissions, and such other information as is relevant to air, water, or land pollution and is available.

(17) Prior to adopting, amending, or repealing standards and classifications of air, water, and land quality and rules and regulations under the Integrated Solid Waste Management Act or the Livestock Waste Management Act, the council shall, after due notice, conduct public hearings thereon. Notice of public hearings shall specify the waters or the area of the state for which standards of air, water, or land are sought to be adopted, amended, or repealed and the time, date, and place of such hearing. Such hearing shall be held in the general area to be affected by such standards. Such notice shall be given in accordance with the Administrative Procedure Act.

(18) Standards of quality of the air, water, or land of the state and rules and regulations adopted under the Integrated Solid Waste Management Act or the Livestock Waste Management Act or any amendment or repeal of such standards or rules and regulations shall become effective upon adoption by the council and filing in the office of the Secretary of State. In adopting standards of air, water, and land quality or making any amendment thereof, the council shall specify a reasonable time for persons discharging wastes into the air, water, or land of the state to comply with such standards and upon the expiration of any such period of time may revoke or modify any permit previously issued which authorizes the discharge of wastes into the air, water, or land of this state which results in reducing the quality of such air, water, or land below the standards established therefor by the council.

(19) All standards of quality of air, water, or land and all rules and regulations adopted pursuant to law by the council prior to May 29, 1981, and applicable to specified air, water, or land are hereby approved and adopted as standards of quality of and rules and regulations for such air, water, or land.

(20) In addition to such standards as are heretofore authorized, the council shall adopt and promulgate rules and regulations to set standards of performance, effluent standards, pretreatment standards, treatment standards, toxic pollutant standards and limitations, effluent limitations, effluent prohibitions, and quantitative limitations or concentrations which shall in all respects conform with and meet the requirements of the National Pollutant Discharge Elimination System in the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(21)(a) The council shall adopt and promulgate rules and regulations requiring all new or renewal permit or license applicants regulated under the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act to establish proof of financial responsibility by providing funds in the event of abandonment, default, or other inability of the permittee or licensee to meet the requirements of its permit or license or other conditions imposed by the department pursuant to the acts. The council may exempt classes of permittees or licensees from the requirements of this subdivision when a finding is made that such exemption will not result in a significant risk to the public health and welfare.

(b) Proof of financial responsibility shall include any of the following made payable to or held in trust for the benefit of the state and approved by the department:

(i) A surety bond executed by the applicant and a corporate surety licensed to do business in this state;

(ii) A deposit of cash, negotiable bonds of the United States or the state, negotiable certificates of deposit, or an irrevocable letter of credit of any bank or other savings institution organized or transacting business in the United States in an amount or which has a market value equal to or greater than the amount of the bonds required for the bonded area under the same terms and conditions upon which surety bonds are deposited;

(iii) An established escrow account; or

(iv) A bond of the applicant without separate surety upon a satisfactory demonstration to the director that such applicant has the financial means sufficient to self-bond pursuant to bonding requirements adopted by the council consistent with the purposes of this subdivision.

(c) The director shall determine the amount of the bond, deposit, or escrow account which shall be reasonable and sufficient so the department may, if the permittee or licensee is unable or unwilling to do so and in the event of forfeiture of the bond or other financial responsibility methods, arrange to rectify any improper management technique committed during the term of the permit or license and assure the performance of duties and responsibilities required by the permit or license pursuant to law, rules, and regulations.

(d) In determining the amount of the bond or other method of financial responsibility, the director shall consider the requirements of the permit or license or any conditions specified by the department, the probable difficulty of completing the requirements of such permit, license, or conditions due to such factors as topography, geology of the site, and hydrology, and the prior history of environmental activities of the applicant.

This subsection shall apply to hazardous waste treatment, storage, or disposal facilities which have received interim status.

(22) The council shall adopt and promulgate rules and regulations no more stringent than the provisions of section 1453 et seq. of the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300j-13 et seq., for public water system source water assessment programs.

The council may adopt and promulgate rules and regulations to implement a source water petition program no more stringent than section 1454 et seq. of the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300j-14 et seq.

**Source:** Laws 1971, LB 939, § 5; Laws 1972, LB 1435, § 4; Laws 1973, LB 538, § 2; Laws 1974, LB 1029, § 3; Laws 1979, LB 342, § 2; Laws 1980, LB 853, § 3; Laws 1981, LB 216, § 3; Laws 1983, LB 356, § 5; Laws 1984, LB 1078, § 3; Laws 1986, LB 1008, § 2; Laws 1992, LB 1257, § 79; Laws 1993, LB 623, § 3; Laws 1994, LB 570, § 7; Laws 1994, LB 1031, § 1; Laws 1997, LB 517, § 25; Laws 1998, LB 1209, § 21; Laws 1999, LB 784, § 1; Laws 2001, LB 126, § 1; Laws 2001, LB 667, § 49; Laws 2004, LB 449, § 1; Laws 2006, LB 872, § 3; Laws 2011, LB30, § 1; Laws 2015, LB413, § 2.

#### Cross References

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

**Integrated Solid Waste Management Act**, see section 13-2001.

**Livestock Waste Management Act**, see section 54-2416.

### **81-1517 Political subdivision; permits; department; powers; evaluation and determination of terms and conditions; factors.**

(1) In issuing permits to any political subdivision under the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the department may exercise all possible discretion allowed by the United States Environmental Protection Agency to enable the political subdivision to maintain environmental infrastructure while improving water quality in a manner that is sustainable and within the financial capability of the political subdivision. In exercising such discretion, the department may, when requested by a political subdivision, undertake an evaluation and make a determination of the necessity of specific permit terms and conditions to achieve water quality objectives. Such determination may affect the level of water treatment or pollution control, the length of time necessary for compli-



ance, or both. Any political subdivision may request this evaluation and determination from the department in the issuance or reissuance of its permit.

(2) The department may include, but is not limited to, consideration of the following factors in making its evaluation and determination under subsection (1) of this section:

(a) The financial capability of a political subdivision to raise and secure necessary funding at a reasonable cost;

(b) The affordability for ratepayers for implementation of pollution control options available to a political subdivision using the most appropriate methodology and measurements for the political subdivision in making such affordability determination;

(c) The future growth potential and projections of a political subdivision and whether its infrastructure is sufficient for projected needs;

(d) The overall costs and environmental benefits of control technologies;

(e) Other environmental improvement investments made by a political subdivision; and

(f) Any other relevant economic and social concerns or environmental conditions.

**Source:** Laws 2015, LB413, § 3.

**81-1518 Environmental Infrastructure Sustainability Fund; created; use; investment.**

The Environmental Infrastructure Sustainability Fund is created. The fund shall be administered by the department. Revenue from the following sources shall be credited to the fund: (1) Application fees collected under section 81-1519; (2) reimbursements for actual costs necessary to complete environmental infrastructure sustainability evaluations as authorized under section 81-1517; (3) supplemental environmental projects resulting from enforcement settlements; and (4) gifts, grants, reimbursements, or appropriations from any source intended to be used for purposes of section 81-1517. The fund shall be used by the department to offset costs related to the completion of environmental infrastructure sustainability evaluations as authorized by section 81-1517. 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, LB413, § 4.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-1519 Political subdivision; evaluation; application fee; costs; refund.**

Any political subdivision requesting an evaluation authorized under section 81-1517 shall submit a request on a form approved by the department and provide the department with an application fee not to exceed five thousand dollars. If the costs of the department exceed the initial deposit, the department and political subdivision shall enter into an agreement establishing a schedule for the payment of additional costs by the political subdivision. After the completion of the environmental infrastructure sustainability evaluation, any

balance of funds paid under this section shall be refunded to the political subdivision.

**Source:** Laws 2015, LB413, § 5.

**81-1520 Political subdivision; evaluation; fee schedule.**

The council shall adopt and promulgate rules and regulations to establish a tiered application fee schedule to be charged to political subdivisions requesting an environmental infrastructure sustainability evaluation as authorized under section 81-1517. The rules and regulations shall take into account the population of a political subdivision and any financial hardship that may impact the ability to pay the application fee.

**Source:** Laws 2015, LB413, § 6.

**81-1531.01 Act, how construed.**

Nothing in the Environmental Protection Act shall be construed to apply to any wells or holes covered by sections 57-901 to 57-922.

**Source:** Laws 1983, LB 356, § 10; Laws 2016, LB1082, § 17.

**81-1532 Act, how cited.**

Sections 81-1501 to 81-1532 shall be known and may be cited as the Environmental Protection Act.

**Source:** Laws 1971, LB 939, § 32; Laws 1983, LB 356, § 12; Laws 1987, LB 114, § 18; Laws 1991, LB 528, § 2; Laws 1992, LB 1257, § 92; Laws 1994, LB 570, § 12; Laws 1998, LB 1209, § 30; Laws 2000, LB 1234, § 13; Laws 2001, LB 461, § 8; Laws 2004, LB 449, § 3; Laws 2015, LB413, § 7.

(b) LITTER REDUCTION AND RECYCLING ACT

**81-1558 Nebraska Litter Reduction and Recycling Fund; created; use; investment.**

There is hereby created within the state treasury a fund to be known as the Nebraska Litter Reduction and Recycling Fund. The proceeds of the fee imposed by sections 81-1559 to 81-1560.02, money received by the department as gifts, donations, or contributions toward the goals stated in section 81-1535, and money received by the department for nonprofit activities concerning litter reduction and recycling, including, but not limited to, honoraria, literature furnished by the department, and funds realized as reimbursement for expenses in conducting educational forums, shall be remitted to the State Treasurer for credit to such fund to be used for the administration and enforcement of the Nebraska Litter Reduction and Recycling Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Litter Reduction and Recycling 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 120, § 25; Laws 1981, LB 253, § 15; Laws 1993, LB 203, § 11; Laws 1994, LB 1066, § 113; Laws 1999, LB 592, § 2; Laws 2017, LB331, § 52.

Termination date October 30, 2020.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## (e) STORAGE OF HAZARDOUS SUBSTANCES

**81-1575 Repealed. Laws 2016, LB712, § 4.**

**81-1576 Repealed. Laws 2016, LB712, § 4.**

**81-1577 Repealed. Laws 2016, LB712, § 4.**

**81-1577.01 Motor vehicle fuel storage tanks; aboveground tanks authorized.**

(1) The State Fire Marshal shall permit by rule and regulation, in cities, in villages, and in unincorporated areas, the installation of aboveground tanks used for the storage of motor vehicle fuel by dealers who sell motor vehicle fuel at retail.

(2) For purposes of this section, dealers and motor vehicle fuel shall have the meanings provided in section 66-482 for importers and motor vehicle fuel.

**Source:** Laws 1990, LB 1118, § 1; Laws 1991, LB 627, § 143; Laws 2016, LB712, § 2.

(k) WASTEWATER TREATMENT FACILITIES  
CONSTRUCTION ASSISTANCE ACT

**81-15,149 Terms, defined.**

As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act means the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of wastewater treatment works or nonpoint source control systems; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works or nonpoint source control systems; or the inspection or supervision of any of the foregoing items;

(3) Council means the Environmental Quality Council;

(4) County means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;

(5) Department means the Department of Environmental Quality;

(6) Director means the Director of Environmental Quality;

(7) Eligible financial institution means a bank that agrees to participate in the linked deposit program and which is chartered to conduct banking in this state pursuant to the Nebraska Banking Act, is chartered to conduct banking by another state and authorized to do business in this state, or is a national bank authorized to do business in this state;

(8) Fund means the Wastewater Treatment Facilities Construction Loan Fund;

(9) Linked deposit program means the Wastewater Treatment Facilities Construction Assistance Act Linked Deposit Program established in accordance with section 81-15,151.03;

(10) Municipality means any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(11) Nonpoint source control systems means projects which establish the use of methods, measures, or practices to control the pollution of surface waters and ground water that occurs as pollutants are transported by water from diffuse or scattered sources. Such projects include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures applied before, during, and after pollution-producing activities. Sources of nonpoint source pollution may include, but are not limited to, agricultural, forestry, and urban lands, transportation corridors, stream channels, mining and construction activities, animal feeding operations, septic tank systems, underground storage tanks, landfills, and atmospheric deposition;

(12) Operate and maintain means all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works or nonpoint source control systems in accordance with its intended purpose; and

(13) Wastewater treatment works means the structures, equipment, processes, and land required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

**Source:** Laws 1988, LB 766, § 3; Laws 1993, LB 3, § 67; Laws 1994, LB 1139, § 39; Laws 1996, LB 1226, § 22; Laws 2003, LB 164, § 1; Laws 2004, LB 916, § 27; Laws 2014, LB514, § 3; Laws 2016, LB737, § 1.

#### Cross References

County Industrial Sewer Construction Act, see section 23-3601.  
Nebraska Banking Act, see section 8-101.02.

### **81-15,150 Federal grants; director; powers.**

The director may obligate and administer any federal grants to municipalities and counties pursuant to the Wastewater Treatment Facilities Construction Assistance Act and the Clean Water Act.

**Source:** Laws 1988, LB 766, § 4; Laws 1994, LB 1139, § 40; Laws 1996, LB 1226, § 23; Laws 2016, LB737, § 2.

### **81-15,151 Wastewater Treatment Facilities Construction Loan Fund; transfers authorized; Construction Administration Fund; created; use; investment.**

(1)(a) The Wastewater Treatment Facilities Construction Loan Fund is hereby created. The fund shall be held as a trust fund for the purposes and uses described in the Wastewater Treatment Facilities Construction Assistance Act.

(b) The fund shall consist of federal capitalization grants, state matching appropriations, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the act and may use (i) up to four percent of all federal capitalization grant

awards to the fund, (ii) up to four hundred thousand dollars per year, or (iii) the equivalent of one-fifth percent per year of the current valuation of the fund for the reasonable cost of administering the fund and conducting activities under Title VI of the federal Clean Water Act.

(c) The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that (i) amounts designated by the director for use in the linked deposit program shall be deposited with eligible financial institutions by the director and (ii) any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

(d) The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

(e) The fund and the assets thereof may be used, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, (i) to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon, (ii) to deposit as provided by the linked deposit program, and (iii) to buy or refinance the debt obligation of municipalities for wastewater treatment works if the debt was incurred and construction was begun after March 7, 1985. Eligibility and terms of such refinancing shall be in accordance with the Wastewater Treatment Facilities Construction Assistance Act.

(2)(a) There is hereby created the Construction Administration Fund. Any funds available for administering loans or fees collected pursuant to the Wastewater Treatment Facilities Construction Assistance Act shall be deposited in such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

(b) The Construction Administration Fund and assets thereof may be used, to the extent permitted by the Clean Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (11), (12), and (13) of section 81-15,153. The annual obligation of the state pursuant to subdivisions (11) and (13) of such section shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to this section in the prior fiscal year.

(c) The director may transfer any money in the Construction Administration Fund to the Wastewater Treatment Facilities Construction Loan Fund to meet the nonfederal match requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (11) of section 81-15,153.

**Source:** Laws 1988, LB 766, § 5; Laws 1989, LB 623, § 1; Laws 1989, LB 311, § 9; Laws 1993, LB 3, § 68; Laws 1994, LB 1066, § 121; Laws 1996, LB 1226, § 24; Laws 2008, LB726, § 1; Laws 2014, LB514, § 4; Laws 2016, LB737, § 3.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-15,153 Department; powers and duties.**

The department shall have the following powers and duties:

(1) The power to establish a program to make loans to municipalities or to counties, individually or jointly, for construction or modification of publicly owned wastewater treatment works in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power to establish a program to make loans to municipalities or to counties for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(3) The power, if so authorized by the council pursuant to section 81-15,152, to execute and deliver documents obligating the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof to the extent permitted by section 81-15,151 to repay, with interest, loans to or deposits into the fund and to execute and deliver documents pledging to the extent permitted by section 81-15,151 all or part of the fund and its assets to secure, directly or indirectly, the loans or deposits;

(4) The power to establish the linked deposit program to promote loans for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations adopted and promulgated pursuant to such act;

(5) The duty to prepare an annual report for the Governor and the Legislature containing information which shows the financial status of the program. The report submitted to the Legislature shall be submitted electronically;

(6) 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 fund;

(c) Accounting for disbursements made by the fund; and

(d) Balancing the fund at the beginning and end of the accounting period;

(7) 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;

(8) 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;

(9) The power to refinance debt obligations of municipalities in accordance with the rules and regulations adopted and promulgated by the council;

(10) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

(11) The power to enter into agreements to provide grants concurrent with loans to municipalities with populations of ten thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census which demonstrate serious financial hardships. The department may authorize grants for up to one-half of the eligible project cost. Such grants shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(12) The power to authorize emergency grants to municipalities with wastewater treatment facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such grants shall not be used for routine repair or maintenance of facilities;

(13) The power to provide financial assistance to municipalities with populations of ten thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census for completion of engineering studies, research projects, investigating low-cost options for achieving compliance with the Clean Water Act, encouraging wastewater reuse, and conducting other studies for the purpose of enhancing the ability of communities to meet the requirements of the Clean Water Act. The department may authorize financial assistance for up to ninety percent of the eligible project cost. Such state allocation shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds;

(14) The power to provide grants or an additional interest subsidy on loans for municipalities if the project contains a sustainable community feature, measurable energy-use reductions, or low-impact development or if there are any special assistance needs as determined under section 81-1517; and

(15) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

**Source:** Laws 1988, LB 766, § 7; Laws 1989, LB 311, § 11; Laws 1993, LB 3, § 69; Laws 1994, LB 1139, § 42; Laws 1996, LB 1226, § 26; Laws 2000, LB 1234, § 15; Laws 2003, LB 164, § 2; Laws 2008, LB726, § 2; Laws 2012, LB782, § 203; Laws 2014, LB514, § 7; Laws 2015, LB413, § 8; Laws 2017, LB113, § 59.

#### **81-15,154 Categories of loan eligibility; eligible items.**

Categories of loan eligibility shall include: Primary, secondary, or tertiary treatment and appurtenances; infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; acquisition of land integral to the treatment process; acquisition of land and interests in land necessary for construction; correction of combined sewer overflows; water conservation, efficiency, or reuse; energy efficiency; reuse or recycling of wastewater, stormwater, or subsurface drainage water; development and implementation of watershed projects; measures to increase the security of treatment works; and nonpoint source control systems. Loans shall be made only for eligible items within such categories. For loans made entirely from state funds, eligible items shall include, but not be limited

to, the costs of engineering services and contracted construction. Eligible items shall not include the costs of water rights, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal or county administrative costs. For loans made in whole or in part from federal funds, eligible items shall be those identified pursuant to the Clean Water Act.

**Source:** Laws 1988, LB 766, § 8; Laws 1989, LB 623, § 3; Laws 1994, LB 1139, § 43; Laws 1996, LB 1226, § 27; Laws 2016, LB737, § 4.

**81-15,155 Loans to municipalities or counties; conditions.**

(1) All loans made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities or to counties that:

- (a) Meet the requirements of financial capability set by the department;
- (b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;
- (c) Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;
- (d) Provide a written assurance, signed by an attorney, that the municipality or county has proper title, easements, and rights-of-way to the property on or through which the wastewater treatment works or nonpoint source control systems is to be constructed or extended;
- (e) Require the contractor of the construction project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;
- (f) Provide a written notice of completion and start of operation of the facility; and
- (g) Employ a professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services.

(2) Loans made under the act for the construction, rehabilitation, operation, and maintenance of wastewater treatment works shall be made only to municipalities or to counties which meet the conditions of subsection (1) of this section and, in addition, that:

- (a) Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;
- (b) Provide capacity for up to the term of the loan, but not less than twenty years, for domestic and industrial growth or reasonable capacity as determined by the department;
- (c) Agree to operate and maintain the wastewater treatment works so that it will function properly over the structural and material design life which shall not be less than twenty years; and
- (d) Provide a certified operator pursuant to voluntary or mandatory certification program, whichever is in effect.

**Source:** Laws 1988, LB 766, § 9; Laws 1994, LB 1139, § 44; Laws 1996, LB 1226, § 28; Laws 1997, LB 622, § 125; Laws 2016, LB737, § 5.

**81-15,156 Loan terms.**



Loan terms shall include, but not be limited to, the following:

- (1) The term of the loan shall not exceed the lesser of thirty years or the projected useful life of the project;
- (2) The interest rate shall be at or below market interest rates;
- (3) The annual principal and interest payment shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than the loan term after the date of completion of the project; and
- (4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

**Source:** Laws 1988, LB 766, § 10; Laws 2016, LB737, § 6.

#### (I) WASTE REDUCTION AND RECYCLING

##### **81-15,158.01 Act, how cited.**

Sections 81-15,158.01 to 81-15,165 shall be known and may be cited as the Waste Reduction and Recycling Incentive Act.

**Source:** Laws 1994, LB 1034, § 4; Laws 1997, LB 495, § 6; Laws 2016, LB1101, § 1.

##### **81-15,159.01 Department of Environmental Quality; conduct study; establish advisory committee; members; department powers; report.**

(1) The Department of Environmental Quality shall conduct a study to examine the status of solid waste management programs operated by the department and make recommendations to modernize and revise such programs. The study shall include, but not be limited to: (a) Whether existing state programs regarding litter and waste reduction and recycling should be amended or merged; (b) a needs assessment of the recycling and composting programs in the state, including the need for infrastructure development operating standards, market development, coordinated public education resulting in behavior change, and incentives to increase recycling and composting; (c) methods to partner with political subdivisions, private industry, and private, nonprofit organizations to most successfully address waste management issues in the state; (d) recommendations regarding existing funding sources and possible new revenue sources at the state and local level to address existing and emerging solid waste management issues; and (e) revisions to existing grant programs to address solid waste management issues in a proactive manner.

(2) The Director of Environmental Quality shall establish an advisory committee to advise the department regarding the study described in this section. The members of the advisory committee shall be appointed by the director and shall include no more than nine members. The director shall designate a chairperson of the advisory committee. The members shall receive no compensation for their services.

(3) In addition to the advisory committee, the department may hire consultants and special experts to assist in the study described in this section. After completion of the study, the department shall submit a report, including recommendations, to the Executive Board of the Legislative Council and the chairpersons of the Natural Resources Committee, the Urban Affairs Commit-

tee, and the Appropriations Committee of the Legislature no later than December 15, 2017. The report shall be submitted electronically.

**Source:** Laws 2016, LB1101, § 2.

**81-15,160 Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.**

(1) The Waste Reduction and Recycling Incentive Fund is created. The department shall deduct from the fund amounts sufficient to reimburse itself for its costs of administration of the fund. The fund shall be administered by the Department of Environmental Quality. The fund shall consist of proceeds from the fees imposed pursuant to the Waste Reduction and Recycling Incentive Act.

(2) The fund may be used for purposes which include, but are not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs;

(h) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate combustible waste to generate and recover energy resources, except that no disbursements shall be made under this section for scrap tire processing related to tire-derived fuel; and

(i) Grants for reimbursement of costs to cities of the second class, villages, and counties of five thousand or fewer population for the deconstruction of abandoned buildings. Eligible deconstruction costs will be related to the recovery and processing of recyclable or reusable material from the abandoned buildings.

(3) Grants up to one million five hundred thousand dollars annually shall be available until June 30, 2024, for new scrap tire projects only, if acceptable scrap tire project applications are received. Eligible categories of disbursement under section 81-15,161 may include, but are not limited to:

(a) Reimbursement for the purchase of crumb rubber generated and used in Nebraska, with disbursements not to exceed fifty percent of the cost of the crumb rubber;

(b) Reimbursement for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content, with disbursements not to exceed twenty-five percent of the product's retail cost;

(c) Participation in the capital costs of building, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived product, with disbursements not to exceed fifty percent of such costs or five hundred thousand dollars, whichever is less;

(d) Participation in the capital costs of building, equipment, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not to exceed fifty percent of such costs;

(e) Cost-sharing for the manufacturing of tire-derived product, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(f) Cost-sharing for the processing of scrap tires, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(h) Disbursement to a political subdivision up to one hundred percent of costs incurred in cleaning up scrap tire collection and disposal sites; and

(i) Costs related to the study provided in section 81-15,159.01.

The director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

(4) Priority for grants made under section 81-15,161 shall be given to grant proposals demonstrating a formal public/private partnership except for grants awarded from fees collected under subsection (6) of section 13-2042.

(5) Grants awarded from fees collected under subsection (6) of section 13-2042 may be renewed for up to a five-year grant period. Such applications shall include an updated integrated solid waste management plan pursuant to section 13-2032. Annual disbursements are subject to available funds and the grantee meeting established grant conditions. Priority for such grants shall be given to grant proposals showing regional participation and programs which address the first integrated solid waste management hierarchy as stated in section 13-2018 which shall include toxicity reduction. Disbursements for any one year shall not exceed fifty percent of the total fees collected after rebates under subsection (6) of section 13-2042 during that year.

(6) Any person who stores waste tires in violation of section 13-2033, which storage is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

(7) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the Waste Reduction and Recycling Incentive Fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Waste Reduction and Recycling Incentive Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1990, LB 163, § 2; Laws 1992, LB 1257, § 95; Laws 1993, LB 203, § 20; Laws 1993, LB 444, § 1; Laws 1994, LB 1034, § 7; Laws 1994, LB 1066, § 122; Laws 1997, LB 495, § 9; Laws 1999, LB 592, § 3; Laws 2001, LB 461, § 16; Laws 2002, Second Spec.

Sess., LB 1, § 7; Laws 2003, LB 143, § 11; Laws 2007, LB568, § 3; Laws 2009, LB180, § 2; Laws 2009, LB379, § 1; Laws 2009, First Spec. Sess., LB3, § 78; Laws 2013, LB549, § 1; Laws 2016, LB1101, § 3; Laws 2018, LB1008, § 5.

Operative date July 19, 2018.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(n) NEBRASKA ENVIRONMENTAL TRUST ACT

**81-15,175 Fund allocations; board; powers and duties; grant award to Water Resources Cash Fund; payments; legislative intent; additional grant; additional reporting.**

(1) The board may make an annual allocation each fiscal year from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund as provided in section 81-15,174.01. The board shall make annual allocations from the Nebraska Environmental Trust Fund and may make annual allocations each fiscal year from the Nebraska Environmental Endowment Fund for projects which conform to the environmental categories of the board established pursuant to section 81-15,176 and to the extent the board determines those projects to have merit. The board shall establish a calendar annually for receiving and evaluating proposals and awarding grants. To evaluate the economic, financial, and technical feasibility of proposals, the board may establish subcommittees, request or contract for assistance, or establish advisory groups. Private citizens serving on advisory groups shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(2) The board shall establish rating systems for ranking proposals which meet the board's environmental categories and other criteria. The rating systems shall include, but not be limited to, the following considerations:

(a) Conformance with categories established pursuant to section 81-15,176;

(b) Amount of funds committed from other funding sources;

(c) Encouragement of public-private partnerships;

(d) Geographic mix of projects over time;

(e) Cost-effectiveness and economic impact;

(f) Direct environmental impact;

(g) Environmental benefit to the general public and the long-term nature of such public benefit; and

(h) Applications recommended by the Director of Natural Resources and submitted by the Department of Natural Resources pursuant to subsection (7) of section 61-218 shall be awarded fifty priority points in the ranking process for the 2011 grant application if the Legislature has authorized annual transfers of three million three hundred thousand dollars to 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 in fiscal year 2013-14. Priority points shall be awarded if the proposed programs set forth in the grant application are consistent with the purposes of reducing consumptive uses of water, enhancing streamflows, re-

charging ground water, or supporting 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.

(3) A grant awarded under this section pursuant to an application made under subsection (7) of section 61-218 shall be paid out in the following manner:

(a) The initial three million three hundred thousand dollar installment shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund no later than fifteen business days after the date that the grant is approved by the board;

(b) The second three million three hundred thousand dollar installment shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund no later than May 15, 2013; and

(c) The third three million three hundred thousand dollar installment shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund no later than May 15, 2014, if the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund to the Water Resources Cash Fund for fiscal year 2013-14.

(4) It is the intent of the Legislature that the Department of Natural Resources apply for an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2014-15 and a three-year grant that would begin in fiscal year 2017-18 and such application shall be awarded fifty priority points in the ranking process as set forth in subdivision (2)(h) of this section if the following criteria are met:

(a) The Natural Resources Committee of the Legislature has examined options for water funding and has submitted a report electronically to the Clerk of the Legislature and the Governor by December 1, 2012, setting forth:

(i) An outline and priority listing of water management and funding needs in Nebraska, including instream flows, residential, agricultural, recreational, and municipal needs, interstate obligations, water quality issues, and natural habitats preservation;

(ii) An outline of statewide funding options which create a dedicated, sustainable funding source to meet the needs set forth in the report; and

(iii) Recommendations for legislation;

(b) The projects and activities funded by the department through grants from the Nebraska Environmental Trust Fund under this section have resulted in enhanced streamflows, reduced consumptive uses of water, recharged ground water, supported wildlife habitat, or otherwise contributed towards conserving, enhancing, and restoring Nebraska's ground water and surface water resources. On or before July 1, 2014, the department shall submit electronically a report to the Natural Resources Committee of the Legislature providing demonstrable evidence of the benefits accrued from such projects and activities; and

(c) In addition to the grant reporting requirements of the trust, on or before July 1, 2014, the department provides to the board a report which includes documentation that:

(i) Expenditures from the Water Resources Cash Fund made to natural resources districts have met the matching fund requirements provided in subdivision (5)(a) of section 61-218;

(ii) Ten percent or less of the matching fund requirements has been provided by in-kind contributions for expenses incurred for projects enumerated in the grant application. In-kind contributions shall not include land or land rights; and

(iii) All other projects and activities funded by the department through grants from the Nebraska Environmental Trust Fund under this section were matched not less than forty percent of the project or activity cost by other funding sources.

(5) The board may establish a subcommittee to rate grant applications. If the board uses a subcommittee, the meetings of such subcommittee shall be subject to the Open Meetings Act. The subcommittee shall (a) use the rating systems established by the board under subsection (2) of this section, (b) assign a numeric value to each rating criterion, combine these values into a total score for each application, and rank the applications by the total scores, (c) recommend an amount of funding for each application, which amount may be more or less than the requested amount, and (d) submit the ranked list and recommended funding to the board for its approval or disapproval.

(6) The board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. Multiyear commitments may be exempt from the rating process except for the initial application and requests to renew the commitment.

(7) The board shall adopt and promulgate rules and regulations and publish guidelines governing allocations from the fund. The board shall conduct annual reviews of existing projects for compliance with project goals and grant requirements.

(8) Every five years the board may evaluate the long-term effects of the projects it funds. The evaluation may assess a sample of such projects. The board may hire an independent consultant to conduct the evaluation and may report the evaluation findings to the Legislature and the Governor. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 1992, LB 1257, § 52; Laws 1993, LB 138, § 81; Laws 2000, LB 957, § 12; Laws 2002, LB 1003, § 51; Laws 2004, LB 832, § 2; Laws 2011, LB229, § 3; Laws 2011, LB366, § 1; Laws 2012, LB782, § 204; Laws 2017, LB331, § 53.

Cross References

**Open Meetings Act**, see section 84-1407.

(t) PRIVATE ONSITE WASTEWATER TREATMENT  
SYSTEM CONTRACTORS CERTIFICATION  
AND SYSTEM REGISTRATION ACT

**81-15,237 Purposes of act.**

The purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act are to:

(1) Protect the air, water, and land of the state through the certification and regulation of private onsite wastewater treatment system professionals in Nebraska;

(2) Require that all siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping of any private onsite

wastewater treatment system be done by certified professionals, professional engineers licensed in Nebraska, or environmental health specialists registered in Nebraska in accordance with the act and rules and regulations adopted under the act;

(3) Provide for the registration of all private onsite wastewater treatment systems constructed, reconstructed, altered, or modified after August 31, 2003;

(4) Provide for review of plans and specifications, issuance of permits and approvals, construction standards, and requirements necessary for proper operation and maintenance of all private onsite wastewater treatment systems;

(5) Protect the health and general welfare of the citizens of Nebraska; and

(6) Protect the air, water, and land of the state from potential pollution by providing for proper siting, layout, construction, closure, reconstruction, alteration, modification, repair, and pumping of private onsite wastewater treatment systems.

**Source:** Laws 2003, LB 94, § 2; Laws 2007, LB333, § 2; Laws 2016, LB328, § 1.

#### **81-15,247 Rules and regulations.**

The council shall adopt and promulgate rules and regulations to carry out the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. Such rules and regulations shall provide for, but not be limited to:

(1) Certification of private onsite wastewater treatment system professionals;

(2) Establishing categories for such professionals to be certified under the act;

(3) Hardship certifications;

(4) Examination requirements for certification;

(5) Continuing education requirements for certification;

(6) A fee schedule which covers direct and indirect costs to administer the act. Such costs include (a) system registration, late fees for system registration, application for certification, examination, and renewal, late fees for renewal, hardship certifications, fees for continuing education classes offered or approved by the department, other continuing education costs, and administration, (b) development and enforcement of standards, and (c) investigation, inspection, and enforcement related to any private onsite wastewater treatment system;

(7) Requirements for the registration of private onsite wastewater treatment systems to be constructed, reconstructed, altered, modified, or inspected by professionals certified under the act; and

(8) Requiring that all private onsite wastewater treatment system siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping be performed by certified professionals in accordance with the act, rules and regulations adopted under the act, and other rules and regulations adopted and promulgated by the council.

**Source:** Laws 2003, LB 94, § 12; Laws 2007, LB333, § 3; Laws 2016, LB328, § 2.

#### **81-15,248.01 Fee schedule.**

The council shall adopt and promulgate rules and regulations to develop a fee schedule which covers direct and indirect costs to administer requirements related to private onsite wastewater treatment systems authorized by the Environmental Protection Act. Such costs include costs related to review of submitted plans and specifications, issuance of permits and approvals, proper operation and maintenance, development and enforcement of standards, closure, administration, investigation, inspection, and enforcement.

**Source:** Laws 2007, LB333, § 5; Laws 2016, LB328, § 3.

Cross References

Environmental Protection Act, see section 81-1532.

## ARTICLE 16

### STATE ENERGY OFFICE

#### (a) STATE ENERGY OFFICE

Section

- 81-1601. State Energy Office; created; director; compensation; personnel.
- 81-1602. State Energy Office; duties; enumerated.
- 81-1603. State Energy Office; powers; enumerated.
- 81-1604. Legislative findings; strategic state energy plan; development; advisory committee; contents of plan.
- 81-1605. State Energy Office; powers and duties; limitation.
- 81-1606. Director of the State Energy Office; energy statistics and information; develop and maintain; report.
- 81-1607.01. State Energy Office Cash Fund; created; use; investment.

#### (a) STATE ENERGY OFFICE

#### **81-1601 State Energy Office; created; director; compensation; personnel.**

(1) There is hereby created an agency of state government to be known as the State Energy Office. The office may be a separate division within an existing executive department.

(2) The chief executive officer shall be known as the Director of the State Energy Office and shall be appointed by the Governor with the advice and consent of the Legislature. The director shall administer the affairs of the office and shall serve at the pleasure of the Governor. The director may employ such assistants, professional staff, and other employees as may be deemed necessary to effectively carry out the provisions of sections 81-1601 to 81-1605 within such appropriations as the Legislature may provide. The salary of the director shall be fixed by the Governor unless otherwise expressly provided for by law.

**Source:** Laws 1977, LB 232, § 1; Laws 2015, LB469, § 8.

#### **81-1602 State Energy Office; duties; enumerated.**

The State Energy Office shall have the following duties:

(1) To serve as or assist in developing and coordinating a central repository within state government for the collection of data on energy;

(2) To undertake a continuing assessment of the trends in the availability, consumption, and development of all forms of energy;

(3) To collect and analyze data relating to present and future demands and resources for all sources of energy and to specify energy needs for the state;



(4) To recommend to the Governor and the Legislature energy policies and conservation measures for the state and to carry out such measures as are adopted;

(5) To provide for public dissemination of appropriate information on energy, energy sources, and energy conservation;

(6) To accept, expend, or disburse funds, public or private, made available to it for research studies, demonstration projects, or other activities which are related either to energy conservation and efficiency or development;

(7) To study the impact and relationship of state energy policies to national and regional energy policies and engage in such activities as will reasonably insure that the State of Nebraska and its citizens receive an equitable share of energy supplies, including the administration of any federally mandated or state-mandated energy allocation programs;

(8) To actively seek the advice of the citizens of Nebraska regarding energy policies and programs;

(9) To prepare emergency allocation plans suggesting to the Governor actions to be taken in the event of serious shortages of energy;

(10) To design a state program for conservation of energy and energy efficiency;

(11) To provide technical assistance to local subdivisions of government;

(12) To provide technical assistance to private persons desiring information on energy conservation and efficiency techniques and the use of renewable energy technologies;

(13) To develop a strategic state energy plan pursuant to section 81-1604;

(14) To develop and disseminate transparent and objective energy information and analysis while utilizing existing energy planning resources of relevant stakeholder entities;

(15) To actively seek to maximize federal and other nonstate funding and support to the state for energy planning; and

(16) To monitor energy transmission capacity planning and policy affecting the state and the regulatory approval process for the development of energy infrastructure and make recommendations to the Governor and electronically to the Legislature as necessary to facilitate energy infrastructure planning and development.

**Source:** Laws 1977, LB 232, § 2; Laws 1980, LB 954, § 58; Laws 1990, LB 987, § 8; Laws 1992, LB 1257, § 96; Laws 2015, LB469, § 9.

#### **81-1603 State Energy Office; powers; enumerated.**

The office shall have the power to do such things as are necessary to carry out sections 81-1601 to 81-1605, including but not limited to the following:

(1) To adopt rules and regulations, pursuant to the Administrative Procedure Act, to carry out the purposes of sections 81-1601 to 81-1605;

(2) To make all contracts pursuant to sections 81-1601 to 81-1605 and do all things to cooperate with the federal government, and to qualify for, accept, expend, and dispense public or private funds intended for the implementation of sections 81-1601 to 81-1605;

(3) To contract for services, if such work or services cannot be satisfactorily performed by employees of the agency or by any other part of state government;

(4) To enter into such agreements as are necessary to carry out energy research and development with other states;

(5) To carry out the duties and responsibilities relating to energy as may be requested or required of the state by the federal government;

(6) To cooperate and participate with the approval of the Governor in the activities of organizations of states relating to the availability, conservation, development, and distribution of energy;

(7) To engage in such activities as will seek to insure that the State of Nebraska and its citizens receive an equitable share of energy supplies at a fair price; and

(8) To form advisory committees of citizens of Nebraska to advise the director of the energy office on programs and policies relating to energy and to assist in implementing such programs. Such committees shall be of a temporary nature and no member shall receive any compensation for serving on any such committee but, with the approval of the Governor, members shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177. The minutes of meetings of and actions taken by each committee shall be kept and a record shall be maintained of the name, address, and occupation or vocation of every individual serving on any committee. Such minutes and records shall be maintained in the State Energy Office and shall be available for public inspection during regular office hours.

**Source:** Laws 1977, LB 232, § 3; Laws 1981, LB 204, § 198; Laws 2015, LB469, § 10.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **81-1604 Legislative findings; strategic state energy plan; development; advisory committee; contents of plan.**

(1) The Legislature finds that:

(a) Comprehensive planning enables the state to address its energy needs, challenges, and opportunities and enhances the state's ability to prioritize energy-related policies, activities, and programs; and

(b) Meeting the state's need for clean, affordable, and reliable energy in the future will require a diverse energy portfolio and a strategic approach, requiring engagement of all energy stakeholders in a comprehensive planning process.

(2) The State Energy Office shall develop an integrated and comprehensive strategic state energy plan and review such plan periodically as the office deems necessary. The office may organize technical committees of individuals with expertise in energy development for purposes of developing the plan. If the office forms an advisory committee pursuant to subdivision (8) of section 81-1603 for purposes of such plan, the chairperson of the Appropriations Committee of the Legislature, the chairperson of the Natural Resources Committee of the Legislature, and three members of the Legislature selected by the Executive Board of the Legislative Council shall be nonvoting, ex officio members of such advisory committee.

(3) The strategic state energy plan shall include short-term and long-term objectives that will ensure a secure, reliable, and resilient energy system for the state's residents and businesses; a cost-competitive energy supply and access to affordable energy; the promotion of sustainable economic growth, job creation, and economic development; and a means for the state's energy policy to adapt to changing circumstances.

(4) The strategic state energy plan shall include, but not be limited to:

(a) A comprehensive analysis of the state's energy profile, including all energy resources, end-use sectors, and supply and demand projections;

(b) An analysis of other state energy plans and regional energy activities which identifies opportunities for streamlining and partnerships; and

(c) An identification of goals and recommendations related to:

(i) The diversification of the state's energy portfolio in a way that balances the lowest practicable environmental cost with maximum economic benefits;

(ii) The encouragement of state and local government coordination and public-private partnerships for future economic and investment decisions;

(iii) The incorporation of new technologies and opportunities for energy diversification that will maximize Nebraska resources and support local economic development;

(iv) The interstate and intrastate promotion and marketing of the state's renewable energy resources;

(v) A consistent method of working with and marketing to energy-related businesses and developers;

(vi) The advancement of transportation technologies, alternative fuels, and infrastructure;

(vii) The development and enhancement of oil, natural gas, and electricity production and distribution;

(viii) The development of a communications process between energy utilities and the State Energy Office for responding to and preparing for regulations having a statewide impact; and

(ix) The development of a mechanism to measure the plan's progress.

**Source:** Laws 2015, LB469, § 11.

#### **81-1605 State Energy Office; powers and duties; limitation.**

Notwithstanding any provisions of sections 81-1601 to 81-1605, the State Energy Office shall not perform any duties or exercise any powers which are delegated to other agencies or subdivisions of state government.

**Source:** Laws 1977, LB 232, § 5; Laws 2015, LB469, § 12.

#### **81-1606 Director of the State Energy Office; energy statistics and information; develop and maintain; report.**

The Director of the State Energy Office shall develop and maintain a program of collection, compilation, and analysis of energy statistics and information. Existing information reporting requests, maintained at the state and federal levels, shall be utilized whenever possible in any data collection required under the provisions of sections 81-1601 to 81-1607. A central state repository of energy data shall be developed and coordinated with other

governmental data-collection and record-keeping programs. The director shall, on at least an annual basis, with monthly compilations, submit to the Governor and the Clerk of the Legislature a report identifying state energy consumption by fuel type and by use to the extent that such information is available. The report submitted to the Clerk of the Legislature shall be submitted electronically. Nothing in this section shall be construed as permitting or authorizing the revealing of confidential information. For purposes of this section confidential information shall mean any process, formula, pattern, decision, or compilation of information which is used, directly or indirectly, in the business of the producer, refiner, distributor, transporter, or vendor, and which gives such producer, refiner, distributor, transporter, or vendor an advantage or an opportunity to obtain an advantage over competitors who do not know or use it.

**Source:** Laws 1980, LB 954, § 57; Laws 1983, LB 124, § 9; Laws 2012, LB782, § 205; Laws 2015, LB469, § 13.

#### **81-1607.01 State Energy Office Cash Fund; created; use; investment.**

The State Energy Office Cash Fund is hereby created. The fund shall consist of funds received pursuant to section 57-705. The fund shall be used for the administration of sections 81-1601 to 81-1607, for energy conservation activities, and for providing technical assistance to communities in the area of natural gas other than assistance regarding ownership of regulated utilities, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the State Energy Office 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 727, § 3; Laws 1994, LB 1066, § 126; Laws 2009, First Spec. Sess., LB3, § 81; Laws 2015, LB469, § 14.

#### **Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

## **ARTICLE 17**

### **NEBRASKA CONSULTANTS' COMPETITIVE NEGOTIATION ACT**

#### Section

81-1701. Act; purpose; applicability.

81-1711. Department of Administrative Services; Department of Transportation; project; procedures.

#### **81-1701 Act; purpose; applicability.**

The purpose of the Nebraska Consultants' Competitive Negotiation Act is to provide managerial control over competitive negotiations by the state for acquisition of professional architectural, engineering, landscape architecture, or land surveying services. The act does not apply to (1) contracts under section 57-1503, (2) contracts under subsection (4) of section 39-1349, (3) contracts under sections 39-2808 to 39-2823 except as provided in section 39-2810, or (4)

contracts under the State Park System Construction Alternatives Act except as provided in section 37-1719.

**Source:** Laws 1978, LB 715, § 1; Laws 2011, First Spec. Sess., LB4, § 6; Laws 2015, LB312, § 7; Laws 2016, LB960, § 30; Laws 2018, LB775, § 36.  
Effective date July 19, 2018.

Cross References

State Park System Construction Alternatives Act, see section 37-1701.

**81-1711 Department of Administrative Services; Department of Transportation; project; procedures.**

The Department of Administrative Services shall, with the advice of each agency, prescribe by administrative rules procedures for the determination of a project under its jurisdiction. The Department of Transportation shall prescribe such procedures for highway construction projects. Such procedures may include:

(1) Determination of a project which constitutes a grouping of minor construction, rehabilitation, or renovation activities; and

(2) Determination of a project which constitutes a grouping of substantially similar construction, rehabilitation, or renovation activities.

**Source:** Laws 1978, LB 715, § 11; Laws 2017, LB339, § 289.

**ARTICLE 18**

**CRIME VICTIMS AND WITNESSES**

(a) CRIME VICTIM’S REPARATIONS

Section

- 81-1802. Crime Victim’s Reparations Committee; created; members.
- 81-1803. Committee; members; terms.
- 81-1813. Commission; adopt rules and regulations; forms and materials; provide.
- 81-1823. Award; limitation; how paid.

(b) CRIME VICTIMS AND WITNESSES ASSISTANCE

- 81-1848. Victims and witnesses of crimes; rights; enumerated.
- 81-1848.03. Victim’s rights; waiver.

(a) CRIME VICTIM’S REPARATIONS

**81-1802 Crime Victim’s Reparations Committee; created; members.**

A Crime Victim’s Reparations Committee is hereby created. The committee shall consist of five members of the commission and three public members to be appointed by the Governor subject to approval by the Legislature. One public member shall represent charitable organizations, one public member shall represent businesses, and one public member, who has training and relevant work experience with victims and survivors of crime, shall represent crime victims. The members of the committee shall select a chairperson who is a member of the commission.

**Source:** Laws 1978, LB 910, § 2; Laws 1981, LB 328, § 5; Laws 1986, LB 540, § 3; Laws 2009, LB598, § 3; Laws 2015, LB605, § 88.

**81-1803 Committee; members; terms.**

Members of the committee shall serve for terms of four years.

**Source:** Laws 1978, LB 910, § 3; Laws 1986, LB 540, § 4; Laws 2009, LB598, § 4; Laws 2015, LB605, § 89.

**81-1813 Commission; adopt rules and regulations; forms and materials; provide.**

The commission shall adopt and promulgate rules and regulations prescribing the procedures to be followed in the filing of applications and proceedings under the Nebraska Crime Victim's Reparations Act and any other matters the commission considers appropriate, including special circumstances, such as when expenses of job retraining or similar employment-related rehabilitative services are involved, under which an award from the Victim's Compensation Fund may exceed twenty-five thousand dollars. If the rules and regulations authorize awards in excess of twenty-five thousand dollars for special circumstances, the amount of an award in excess of twenty-five thousand dollars shall only be used for such special circumstances. The committee shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state.

**Source:** Laws 1978, LB 910, § 13; Laws 1981, LB 328, § 7; Laws 1986, LB 540, § 14; Laws 2009, LB598, § 6; Laws 2015, LB605, § 90.

**81-1823 Award; limitation; how paid.**

Except as provided in section 81-1813, no compensation shall be awarded under the Nebraska Crime Victim's Reparations Act from the Victim's Compensation Fund in an amount in excess of twenty-five thousand dollars for each applicant per incident. Each award shall be paid in installments unless the hearing officer or committee decides otherwise.

**Source:** Laws 1978, LB 910, § 23; Laws 1986, LB 540, § 24; Laws 2009, LB598, § 10; Laws 2015, LB605, § 91.

(b) CRIME VICTIMS AND WITNESSES ASSISTANCE

**81-1848 Victims and witnesses of crimes; rights; enumerated.**

(1) Victims as defined in section 29-119 shall have the following rights:

(a) To examine information which is a matter of public record and collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges. Such information shall include any disposition arising from such arrests, charges, sentencing, correctional supervision, and release, but shall not include intelligence or investigative information;

(b) To receive from the county attorney advance reasonable notice of any scheduled court proceedings and notice of any changes in that schedule;

(c) To be present throughout the entire trial of the defendant, unless the victim is to be called as a witness or the court finds sequestration of the victim necessary for a fair trial. If the victim is to be called as a witness, the court may order the victim to be sequestered;

(d) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the following:

(i) The crimes for which the defendant is charged, the defendant's bond, and the time and place of any scheduled court proceedings;

(ii) The final disposition of the case;

(iii) The crimes for which the defendant was convicted;

(iv) The victim's right to make a written or oral impact statement to be used in the probation officer's preparation of a presentence investigation report concerning the defendant;

(v) The address and telephone number of the probation office which is to prepare the presentence investigation report;

(vi) That a presentence investigation report and any statement by the victim included in such report will be made available to the defendant unless exempted from disclosure by order of the court; and

(vii) The victim's right to submit a written impact statement at the sentencing proceeding or to read his or her impact statement submitted pursuant to subdivision (1)(d)(iv) of this section at the sentencing proceeding;

(e) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of any subsequent judicial proceedings if the defendant was acquitted on grounds of insanity;

(f) To be notified as provided in section 81-1850, to testify before the Board of Parole or submit a written statement for consideration by the board, and to be notified of the decision of and any action taken by the board;

(g) To submit a written statement for consideration at any conditional release proceedings, Board of Parole proceedings, pardon proceedings, or commutation proceedings. Conditional release proceeding means a proceeding convened pursuant to a Department of Correctional Services' decision to grant a furlough from incarceration for twenty-four hours or longer or a release into community-based programs, including educational release and work release; and

(h) To have any personal identifying information, other than the victim's name, not be disclosed on pleadings and documents filed in criminal actions that may be available to the public. The Supreme Court shall adopt and promulgate rules to implement this subdivision.

(2) Victims and witnesses of crimes shall have the following rights:

(a) To be informed on all writs of subpoena or notices to appear that they are entitled to apply for and may receive a witness fee;

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled in order to save the person an unnecessary trip to court;

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts and to be provided with information as to the level of protection available;

(d) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;

(f) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

(g) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days after being taken;

(h) To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;

(i) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter;

(j) To be informed by the county attorney of the final disposition of a felony case in which they were involved and to be notified pursuant to section 81-1850 whenever the defendant in such case is released from custody; and

(k) To have the family members of all homicide victims afforded all of the rights under this subsection and services analogous to those provided under section 81-1847.

**Source:** Laws 1981, LB 477, § 6; Laws 1990, LB 87, § 9; Laws 1991, LB 186, § 3; Laws 2004, LB 270, § 11; Laws 2015, LB605, § 92.

**81-1848.03 Victim's rights; waiver.**

Victim's rights under sections 81-1843 to 81-1851 may be waived by the victim at any time by (1) written consent, in person or by attorney, filed with the clerk of the court or (2) oral consent in open court entered on the record.

**Source:** Laws 2004, LB 270, § 14; Laws 2018, LB193, § 92.  
Operative date July 19, 2018.

**ARTICLE 20**

**NEBRASKA STATE PATROL**

(a) GENERAL PROVISIONS

Section

- 81-2004.09. Combined Law Enforcement Information Network Cash Fund; created; use; investment.
- 81-2004.10. Treasury Agency Forfeitures Cash Fund; created; use; investment.
- 81-2010.03. Transferred to section 81-1429.03.

(b) RETIREMENT SYSTEM

- 81-2014. Terms, defined.
- 81-2014.01. Act, how cited.
- 81-2017. Retirement system; contributions; payment; funding of system.
- 81-2019. Retirement system; administration; Public Employees Retirement Board; duties; rules and regulations.
- 81-2019.01. Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
- 81-2025. Retirement; conditions; deferment of payment; board; duties.
- 81-2026. Retirement; annuity; officers; surviving spouse; children; benefit; disability or death in line of duty; benefit; maximum benefit; direct transfer to



## Section

- retirement plan; death while performing qualified military service; additional death benefit.
- 81-2027.08. Officer who became member prior to July 1, 2016; annual benefit adjustment; cost-of-living adjustment calculation method.
- 81-2027.09. Officer who became member on or after July 1, 2016; annual benefit adjustment.
- 81-2027.10. Officer who became member on or after July 1, 2016; lump-sum cost-of-living payment.
- 81-2031.03. Direct rollover; terms, defined; distributee; powers; board; powers.
- 81-2031.04. Retirement system; accept payments and rollovers; limitations; board; powers.
- 81-2032. Retirement system; funds; exemption from legal process; exception.
- 81-2034. Retirement; method of crediting for military service; effect.
- 81-2041. DROP participation authorized; requirements; fees.

## (a) GENERAL PROVISIONS

**81-2004.09 Combined Law Enforcement Information Network Cash Fund; created; use; investment.**

There is hereby created the Combined Law Enforcement Information Network Cash Fund. The fund shall be maintained by the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of fees collected by the Nebraska State Patrol from users of the network and shall be used to pay the costs of operating, maintaining, and enhancing the network. 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 2017, LB331, § 13.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-2004.10 Treasury Agency Forfeitures Cash Fund; created; use; investment.**

There is hereby created the Treasury Agency Forfeitures Cash Fund. All forfeitures and proceeds received by the Nebraska State Patrol under the federal equitable sharing provisions distributed by federal Treasury agencies as of July 1, 2017, shall be deposited in the fund. This section shall not apply to funds otherwise subject to sections 28-431 and 28-1439.02. The fund shall be used only in accordance with the applicable requirements of the federal government. The fund shall be administered by the Superintendent of Law Enforcement and Public Safety. 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 2017, LB331, § 14.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-2010.03 Transferred to section 81-1429.03.**

## (b) RETIREMENT SYSTEM

**81-2014 Terms, defined.**

For purposes of the Nebraska State Patrol Retirement Act:

(1)(a) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age.

(b) For an officer hired before July 1, 2017, the determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature.

(c) For an officer hired on or after July 1, 2017, or rehired on or after July 1, 2017, after termination of employment and being paid a retirement benefit or taking a refund of contributions, the determinations shall be based on a unisex mortality table and an interest rate specified by the board. Both the mortality table and the interest rate shall be recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table, interest rate, and actuarial factors in effect on the officer's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return;

(2) Board means the Public Employees Retirement Board;

(3)(a)(i) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(ii) For any officer employed on or prior to January 4, 1979, compensation includes compensation for unused sick leave or unused vacation leave converted to cash payments.

(iii) For any officer employed after January 4, 1979, and prior to July 1, 2016, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments and includes compensation for unused holiday compensatory time and unused compensatory time converted to cash payments.

(iv) For any officer employed on or after July 1, 2016, compensation does not include compensation for unused sick leave, unused vacation leave, unused holiday compensatory time, unused compensatory time, or any other type of unused leave, compensatory time, or similar benefits, converted to cash payments.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded.

For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(4) Creditable service means service granted pursuant to section 81-2034 and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the officer is paid regular wages except as specifically provided in the Nebraska State Patrol Retirement Act. Creditable service does not include eligibility and vesting credit nor service years for which member contributions are withdrawn and not repaid;

(5) Current benefit means the initial benefit increased by all adjustments made pursuant to the Nebraska State Patrol Retirement Act;

(6) DROP means the deferred retirement option plan as provided in section 81-2041;

(7) DROP account means an individual DROP participant's defined contribution account under section 414(k) of the Internal Revenue Code;

(8) DROP period means the amount of time the member elects to participate in DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election;

(9) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the Nebraska State Patrol Retirement Act. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation;

(10) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(11) Initial benefit means the retirement benefit calculated at the time of retirement;

(12) Officer means law enforcement officer as defined in section 81-1401 and as provided for in sections 81-2001 to 81-2009, but does not include a law enforcement officer who has been granted an appointment conditioned on satisfactory completion of a training program approved by the Nebraska Police Standards Advisory Council;

(13) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(14) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(15) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(16) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if

the member is eligible for retirement and has filed an application but has not yet terminated employment;

(17) Retirement system or system means the Nebraska State Patrol Retirement System as provided in the act;

(18) Service means employment as a member of the Nebraska State Patrol and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the board. Service does not include any period of disability for which disability retirement benefits are received under subsection (1) of section 81-2025;

(19) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(20) Termination of employment occurs on the date on which the Nebraska State Patrol determines that the officer's employer-employee relationship with the patrol is dissolved. The Nebraska State Patrol shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment with the Nebraska State Patrol if the officer returns to regular employment with the Nebraska State Patrol or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased and the date when the employer-employee relationship commenced with the Nebraska State Patrol or another state agency. Termination of employment does not occur upon an officer's participation in DROP pursuant to section 81-2041. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 81-2026, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

**Source:** Laws 1947, c. 211, § 1, p. 687; Laws 1969, c. 511, § 1, p. 2092; R.S.1943, (1978), § 60-441; Laws 1989, LB 506, § 13; Laws 1991, LB 549, § 47; Laws 1994, LB 833, § 34; Laws 1995, LB 501, § 7; Laws 1996, LB 700, § 13; Laws 1996, LB 847, § 34; Laws 1996, LB 1076, § 32; Laws 1996, LB 1273, § 27; Laws 1997, LB 624, § 27; Laws 1999, LB 674, § 7; Laws 2000, LB 1192, § 19; Laws 2001, LB 408, § 19; Laws 2002, LB 470, § 7; Laws 2003, LB 451, § 21; Laws 2007, LB324, § 1; Laws 2012, LB916, § 28; Laws

2013, LB263, § 30; Laws 2016, LB467, § 1; Laws 2017, LB415, § 42; Laws 2018, LB1005, § 35.  
Operative date April 24, 2018.

**Cross References**

**Spousal Pension Rights Act**, see section 42-1101.

**81-2014.01 Act, how cited.**

Sections 81-2014 to 81-2041 shall be known and may be cited as the Nebraska State Patrol Retirement Act.

**Source:** Laws 1996, LB 847, § 33; Laws 1997, LB 624, § 28; Laws 1998, LB 532, § 9; Laws 1998, LB 1191, § 64; Laws 2001, LB 408, § 20; Laws 2002, LB 407, § 48; Laws 2007, LB324, § 2; Laws 2011, LB509, § 40; Laws 2016, LB467, § 2.

**81-2017 Retirement system; contributions; payment; funding of system.**

(1) Commencing July 1, 2010, and until July 1, 2011, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Commencing July 1, 2011, and until July 1, 2013, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to nineteen percent of his or her monthly compensation. Commencing July 1, 2013, each officer who commenced service prior to July 1, 2016, while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to sixteen percent of his or her monthly compensation. Each officer who commenced service on or after July 1, 2016, while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to seventeen percent of his or her monthly compensation. Such amounts shall be deducted monthly by the Director of Administrative Services who shall draw a warrant monthly in the amount of the total deductions from the compensation of members of the Nebraska State Patrol in accordance with subsection (4) of this section, and the State Treasurer shall credit the amount of such warrant to the State Patrol Retirement Fund. The director shall cause a detailed report of all monthly deductions to be made each month to the board.

(2) In addition, commencing July 1, 2010, and until July 1, 2011, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2011, and until July 1, 2013, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of nineteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2013, for each officer who commenced service prior to July 1, 2016, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of sixteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. Commencing July 1, 2016, for each officer who commenced service on or after July 1, 2016, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of seventeen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund. This assessment constitutes an employer match

and shall be contingent upon the officer making his or her contributions to the retirement system.

(3) For the fiscal year beginning on July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board.

(4) The state shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the state in lieu of member contributions. The state shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the Nebraska State Patrol Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

**Source:** Laws 1947, c. 211, § 4, p. 688; Laws 1959, c. 286, § 6, p. 1085; Laws 1965, c. 387, § 1, p. 1243; Laws 1971, LB 987, § 10; Laws 1975, LB 235, § 1; R.S.1943, (1978), § 60-444; Laws 1981, LB 462, § 5; Laws 1984, LB 218, § 4; Laws 1989, LB 506, § 14; Laws 1991, LB 549, § 49; Laws 1994, LB 833, § 36; Laws 1994, LB 1287, § 1; Laws 1995, LB 369, § 6; Laws 1995, LB 574, § 81; Laws 2001, LB 408, § 21; Laws 2002, LB 407, § 50; Laws 2004, LB 514, § 1; Laws 2005, LB 503, § 12; Laws 2006, LB 1019,

§ 12; Laws 2007, LB324, § 4; Laws 2009, LB188, § 7; Laws 2011, LB382, § 7; Laws 2013, LB263, § 32; Laws 2013, LB553, § 17; Laws 2016, LB467, § 3.

**81-2019 Retirement system; administration; Public Employees Retirement Board; duties; rules and regulations.**

The general administration of the Nebraska State Patrol Retirement System, except the investment of funds, is hereby vested in the board. The board may adopt and promulgate rules and regulations as may be necessary to carry out the Nebraska State Patrol Retirement Act. The board shall employ a director and such assistants and employees as may be necessary to efficiently discharge the duties imposed by the act.

**Source:** Laws 1947, c. 211, § 6, p. 688; Laws 1967, c. 391, § 4, p. 1216; Laws 1967, c. 486, § 39, p. 1529; Laws 1971, LB 987, § 11; R.S.1943, (1978), § 60-446; Laws 1991, LB 549, § 51; Laws 1994, LB 833, § 38; Laws 1995, LB 369, § 7; Laws 1996, LB 847, § 35; Laws 2018, LB1005, § 36.  
Operative date July 19, 2018.

**81-2019.01 Board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.**

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of sections 81-2014 to 81-2036, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board may adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all

affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 35; Laws 2015, LB40, § 12; Laws 2018, LB1005, § 37.

Operative date July 19, 2018.

**81-2025 Retirement; conditions; deferment of payment; board; duties.**

(1) Every officer who has been in the employ of the state as such and who becomes disabled and physically unfit to perform the duties of an officer shall be entitled to retire and receive an annuity as provided by law.

(2) Every officer who has been in the employ of the state as such for ten years or more, as calculated in section 81-2033, and has attained the age of fifty years or more shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(3) Any officer who has attained the age of sixty years upon his or her separation from state service but who has not been in the employ of the state for ten years as such shall be entitled to the annuity as provided for in the Nebraska State Patrol Retirement Act.

(4) Every officer who has been in the employ of the state as such for twenty-five years or more, as calculated in section 81-2033, and has attained the age of fifty years shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years with twenty-five years or more of creditable service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(5) Every officer who has been in the employ of the state as such for thirty years or more, as calculated in section 81-2033, shall be entitled to retire and receive an annuity as provided by law. The right to retire with thirty years or more of creditable service shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(6) Payment of any benefit provided under the act may not be deferred later than April 1 of the year following the year in which the officer has both attained at least age seventy and one-half years and terminated his or her employment with the Nebraska State Patrol.

(7) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the system, whichever is later. An application may be filed no more than one hundred twenty days in advance of qualifying for retirement.

(8) The board shall make reasonable efforts to locate the officer or the officer's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the account shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any



officer would otherwise receive under the Nebraska State Patrol Retirement Act.

**Source:** Laws 1947, c. 211, § 12(1), p. 690; Laws 1953, c. 333, § 1, p. 1093; Laws 1969, c. 510, § 3, p. 2090; Laws 1969, c. 511, § 7, p. 2095; Laws 1975, LB 235, § 2; R.S.1943, (1978), § 60-452; Laws 1986, LB 311, § 25; Laws 1989, LB 506, § 15; Laws 1990, LB 953, § 1; Laws 1993, LB 724, § 15; Laws 1994, LB 833, § 40; Laws 1994, LB 1306, § 5; Laws 1997, LB 623, § 35; Laws 1997, LB 624, § 30; Laws 2003, LB 451, § 22; Laws 2017, LB415, § 43.

#### Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

**81-2026 Retirement; annuity; officers; surviving spouse; children; benefit; disability or death in line of duty; benefit; maximum benefit; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.**

(1)(a) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The annuity payments shall continue until the end of the calendar month in which the officer dies. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of creditable service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

(b) For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of creditable service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

(c) For purposes of this computation:

(i) For an officer who became a member prior to July 1, 2016, final average monthly compensation means the sum of the officer's total compensation during the three twelve-month periods of service as an officer in which compensation was the greatest divided by thirty-six and:

(A) For any officer employed on or before January 4, 1979, the officer's total compensation includes payments received for unused vacation and sick leave accumulated during the final three years of service; or

(B) For any officer employed after January 4, 1979, and prior to July 1, 2016, the officer's total compensation includes payments received for unused holiday compensatory time and unused compensatory time; and

(ii) For an officer who became a member on or after July 1, 2016, final average monthly compensation means the sum of the officer's total compensation during the five twelve-month periods of service as an officer in which compensation was the greatest divided by sixty and does not include payments received for unused sick leave, unused vacation leave, unused holiday compensatory time, unused compensatory time, or any other type of unused leave, compensatory time, or similar benefits, converted to cash payments. The five twelve-month periods used for calculating an officer's final average monthly compensation ends with the month during which the officer's final compensation is paid. In the determination of compensation, that part of an officer's compensation for the plan year which exceeds the officer's compensation for the preceding plan year by more than eight percent during the capping period shall be excluded. Such officer's compensation for the first plan year of the capping period shall be compared to the officer's compensation received for the plan year immediately preceding the capping period. For purposes of this subdivision, capping period means the five plan years preceding the officer's retirement date. The board may adopt and promulgate rules and regulations for the implementation of this section, including rules and regulations related to prorating, annualizing, or recalculating an officer's final average monthly compensation for each plan year in the capping period.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of creditable service. If the officer has completed more than seventeen years of creditable service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of creditable service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, benefits shall be provided as a percentage of the amount of the officer's annuity, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If there is no surviving spouse or no dependent child or children of the officer under nineteen years of age, the amount of benefit such officer has received under the Nebraska State Patrol Retirement Act shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate.

(4) Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability.

(5) Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death, calculated as follows:

(a) If there is a surviving spouse but no dependent child or children of the officer under nineteen years of age, the surviving spouse shall receive a benefit equal to seventy-five percent of the amount of the officer's annuity for the remainder of the surviving spouse's life;

(b) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age and there is no other dependent child or children of the officer not in the care of the surviving spouse under nineteen years of age, the benefit shall be equal to one hundred percent of the officer's annuity. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(c) If there is a surviving spouse and the surviving spouse has in his or her care a dependent child or children of the officer under nineteen years of age or there is another dependent child or children of the officer under nineteen years

of age not in the care of the surviving spouse, the benefit shall be twenty-five percent of the amount of the officer's annuity to the surviving spouse and seventy-five percent of the amount of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children but in no case shall the benefit received by a surviving spouse and dependent children residing with such spouse be less than fifty percent of the amount of the officer's annuity. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age. When there is no remaining dependent child of the officer under nineteen years of age, the benefit shall be seventy-five percent of the amount of the officer's annuity to the surviving spouse for the remainder of the surviving spouse's life;

(d) If there is no surviving spouse and a dependent child or children of the officer under nineteen years of age, the benefit shall be equal to seventy-five percent of the officer's annuity to the dependent children of the officer under nineteen years of age to be divided equally among such dependent children. At such time as any dependent child of the officer attains nineteen years of age, the benefit shall be divided equally among the remaining dependent children of the officer who have not yet attained nineteen years of age; and

(e) If no benefits are paid to a surviving spouse or dependent child or children of the officer, benefits will be paid as described in subsection (1) of section 81-2031.

(6) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(7) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the Nebraska State Patrol and such employment had terminated on the date of the member's death.

(8) Any changes made to this section by Laws 2004, LB 1097, shall apply only to retirements, disabilities, and deaths occurring on or after July 16, 2004.

**Source:** Laws 1953, c. 333, § 2, p. 1093; Laws 1957, c. 276, § 1, p. 1004; Laws 1959, c. 296, § 1, p. 1104; Laws 1961, c. 307, § 6, p. 973; Laws 1965, c. 386, § 2, p. 1241; Laws 1969, c. 510, § 4, p. 2090; Laws 1969, c. 511, § 8, p. 2095; Laws 1974, LB 1004, § 1; Laws 1975, LB 235, § 3; Laws 1976, LB 644, § 1; Laws 1977, LB 347, § 1; Laws 1979, LB 80, § 107; R.S.Supp.,1980, § 60-452.01; Laws 1981, LB 462, § 6; Laws 1986, LB 311, § 26; Laws 1987, LB 493, § 1; Laws 1989, LB 506, § 16; Laws 1990, LB 953, § 2; Laws 1991, LB 549, § 55; Laws 1993, LB 724, § 16; Laws 1994, LB 833, § 41; Laws 1994, LB 1306, § 6; Laws 1996, LB 847, § 37; Laws 1996, LB 1273, § 28; Laws 1997, LB 623, § 36; Laws 1997, LB 624, § 31; Laws 2004, LB 1097, § 30; Laws 2006, LB

1019, § 13; Laws 2011, LB509, § 42; Laws 2012, LB916, § 29; Laws 2016, LB467, § 4; Laws 2018, LB1005, § 38.  
Operative date July 19, 2018.

**81-2027.08 Officer who became member prior to July 1, 2016; annual benefit adjustment; cost-of-living adjustment calculation method.**

(1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than sixty percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by sixty percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than sixty percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method in this subsection, the retired member or

beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 81-2025, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 81-2026 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Nebraska State Patrol Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) Beginning July 1, 2010, the minimum accrual rate under this subsection was forty dollars and sixteen cents. Beginning July 1, 2011, the minimum accrual rate under this subsection was forty-one dollars and seventy-nine cents. Beginning July 1, 2012, the minimum accrual rate under this subsection was forty-two dollars and forty-five cents. Beginning July 1, 2013, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) This section applies to an officer who became a member prior to July 1, 2016.

**Source:** Laws 2011, LB509, § 41; Laws 2013, LB263, § 33; Laws 2016, LB467, § 5.

**81-2027.09 Officer who became member on or after July 1, 2016; annual benefit adjustment.**

On July 1 of each year, for officers who became members on or after July 1, 2016:

(1) The board shall determine the number of retired members or beneficiaries of members in the retirement system who became members on or after July 1, 2016, and an annual benefit adjustment shall be made by the board for each such retired member or beneficiary. The benefit paid to a retired member or beneficiary under this section shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) one percent. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees;

(2) Each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retired member's or beneficiary's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each such retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first; and

(3) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

**Source:** Laws 2016, LB467, § 6.

**81-2027.10 Officer who became member on or after July 1, 2016; lump-sum cost-of-living payment.**

(1) Beginning July 1, 2016, for officers who became members on or after July 1, 2016, if the annual valuation made by the actuary, as approved by the board, indicates that the retirement system is fully funded and has sufficient actuarial surplus to provide for a supplemental, lump-sum cost-of-living payment, the board may, in its discretion, elect to pay up to a maximum one and one-half percent supplemental, lump-sum cost-of-living payment to each retired member or beneficiary based on the retired member's or beneficiary's total monthly benefit through June 30 of the year for which the supplemental, lump-sum cost-of-living payment is being calculated. The supplemental, lump-sum cost-of-living payment shall be paid within sixty days after the board's decision. In no event shall the board declare a supplemental, lump-sum cost-of-living payment if such adjustment would cause the plan to be less than fully funded.

(2) For purposes of this section, fully funded means the unfunded actuarial accrued liability, based on the lesser of the actuarial value and the market value, under the entry age actuarial cost method, is less than zero on the most recent actuarial valuation date.

(3) Any decision or determination by the board to declare or not declare a cost-of-living payment or as to whether the annual valuation indicates a sufficient actuarial surplus to provide for a cost-of-living payment shall be made in the sole, absolute, and final discretion of the board and shall not be subject to challenge by any member or beneficiary. In no event shall the Legislature be constrained or limited in amending the system notwithstanding the effect of any such change upon the actuarial surplus of the system and the ability of the board to declare future cost-of-living payments.

**Source:** Laws 2016, LB467, § 7.

**81-2031.03 Direct rollover; terms, defined; distributee; powers; board; powers.**

(1) For purposes of this section and section 81-2031.04:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 81-2031.04, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section



408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 39; Laws 2002, LB 407, § 51; Laws 2012, LB916, § 30; Laws 2018, LB1005, § 39.  
Operative date July 19, 2018.

**81-2031.04 Retirement system; accept payments and rollovers; limitations; board; powers.**

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 81-2031 if the contributions do not exceed the amount of payment required for the service credits purchased by the member pursuant to such section and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments for service credits.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 40; Laws 2002, LB 407, § 52; Laws 2018, LB1005, § 40.  
Operative date July 19, 2018.

**81-2032 Retirement system; funds; exemption from legal process; exception.**

All annuities or benefits which any person shall be entitled to receive under the Nebraska State Patrol Retirement Act 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 except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

**Source:** Laws 1947, c. 211, § 15, p. 692; Laws 1969, c. 511, § 11, p. 2098; R.S.1943, (1978), § 60-459; Laws 1986, LB 311, § 28; Laws 1989, LB 506, § 18; Laws 1994, LB 833, § 45; Laws 1995, LB 574, § 84; Laws 1996, LB 1273, § 29; Laws 2012, LB916, § 31; Laws 2015, LB40, § 13.

**Cross References**

**Spousal Pension Rights Act**, see section 42-1101.

**81-2034 Retirement; method of crediting for military service; effect.**

(1)(a) Any officer of the Nebraska State Patrol who is reemployed pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the officer's period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the officer's accrued benefits and the accrual of benefits under the plan.

(b) The state shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the Nebraska State Patrol shall pay to the retirement system an amount equal to:

(i) The sum of the officer and employer contributions that would have been paid during such period of military service; and

(ii) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, or interest credits that would have accrued on the officer and employer contributions that are paid by the Nebraska State Patrol pursuant to this section shall not be included.

(c) The amount required in subdivision (b) of this subsection shall be paid to the retirement system as soon as reasonably practicable following the date of reemployment, but must be paid within eighteen months of the date the board notifies the Nebraska State Patrol of the amount due. If the Nebraska State Patrol fails to pay the required amount within such eighteen-month period, then the Nebraska State Patrol is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the Nebraska State Patrol is notified by the board until the date the amount is paid.

(d) The board may adopt and promulgate rules and regulations to carry out this subsection, including, but not limited to, rules and regulations on:

(i) How and when the officer and Nebraska State Patrol must notify the retirement system of a period of military service;

(ii) The acceptable methods of payment;

(iii) Determining the service and compensation upon which the contributions must be made;

(iv) Accelerating the payment from the employer due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the officer's termination or retirement or the employer's reorganization, consolidation, merger, or closing; and

(v) The documentation required to substantiate that the officer was reemployed pursuant to 38 U.S.C. 4301 et seq.

(2) This section only applies to military service that falls within the definition of uniformed service under 38 U.S.C. 4301 et seq. Military service does not include service provided pursuant to sections 55-101 to 55-181.

**Source:** Laws 1949, c. 177, § 1, p. 481; Laws 1967, c. 391, § 5, p. 1216; Laws 1971, LB 987, § 15; R.S.1943, (1978), § 60-461; Laws 1991, LB 549, § 59; Laws 1996, LB 847, § 38; Laws 2017, LB415, § 44.

### **81-2041 DROP participation authorized; requirements; fees.**

(1) Any officer who became a member prior to July 1, 2016, and who meets the participation requirements of subsection (2) of this section may participate in DROP. DROP provides that subsequent to attaining normal age and service retirement eligibility, a member may voluntarily choose to participate in DROP upon its adoption which, for purposes of this section, shall be the earlier of September 1, 2008, or the first of the month following a favorable letter determination by the Internal Revenue Service. If the member chooses to participate in DROP, the member shall be deemed to have retired but shall not be deemed to be terminated, and the member may continue in active employment for up to a five-year period. During the DROP period, the member's retirement benefit payments shall be deposited into the DROP account for the benefit of the member until the member actually retires from active employment at or before the expiration of the DROP period. Thereafter, future retirement benefit payments shall be made directly to the member, and the member shall have access to all funds in the DROP account designated for the benefit of the member. DROP funds shall be held and invested in a defined contribution account under section 414(k) of the Internal Revenue Code and shall meet the limitations in section 415 of the code.

(2) To participate in the DROP program, a member shall meet the following requirements:

(a) A member shall be eligible to enter DROP at any time subsequent to the date when the member has (i) attained normal retirement age and (ii) completed twenty-five years of service. Members having attained normal retirement age and completed twenty-five years of service on or before the date of adoption of DROP shall be eligible to enter DROP at any future date;

(b) A member who elects to enter DROP shall be entitled to receive regular age and service retirement benefits in accordance with section 81-2026. A member is entitled to remain in DROP for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit DROP at any time during the DROP period. On or before the completion of the DROP period, the member must separate from active employment and exit DROP. During the DROP period, a member's retirement benefit shall be payable to the DROP account vendor designated in the member's name. Amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under section 415 of the Internal Revenue Code;

(c) A member electing to enter DROP shall choose an annuity payment option. After the option is chosen, the member shall not be entitled to any retirement benefit changes, for reasons including, but not limited to, wage increases, promotions, and demotions, except that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be fixed as of the date of election and shall be payable as if the employee retired on that date and separated from active employment. Upon the death of a member during the DROP period, monthly benefits shall be provided as a percentage of the amount of the member's annuity as set forth in subsection (3) of section 81-2026 based upon the annuity benefit calculation made at commencement of the DROP period. In addition, the balance of the DROP account, if any, shall be provided to the beneficiary or beneficiaries of the member in accordance with subsection (6) of section 81-2026 or, if no beneficiary is provided, to the estate of the member. Upon the disability of a member during the DROP period, the member shall be deemed to have completed the DROP period, shall begin receiving the annuity benefit as calculated at the commencement of the DROP period, and shall be paid the balance of the DROP account, if any;

(d) No member shall be allowed to continue making the required contributions while the member is enrolled in DROP;

(e) During the DROP period, the Nebraska State Patrol shall not be assessed the amount required under subsection (2) of section 81-2017 nor shall such amount be credited to the State Patrol Retirement Fund;

(f) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP period thereby ending the member's participation in DROP. If a member has not voluntarily separated from active employment on or before the completion of the DROP period, the member's retirement benefit shall be paid directly to the member thereby ending the member's active employment. The member's DROP account shall consist of accrued retirement benefits and interest on such benefits;

(g) Any member that is enrolled in DROP shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any DROP investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges, or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member shall not be made up by the retirement system but all of the same shall be borne by the participating DROP member. The retirement system, the state, the board, and the state investment officer shall not be responsible for any investment results under the DROP agreement. Transfers between investment options shall be in accordance with the rules and regulations of DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for the member's retirement benefit distributions and net investment earnings and losses;

(h) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account;

(i) Cost-of-living adjustments or payments as provided for in section 81-2027.08 or 81-2027.09 and 81-2027.10 shall not be applied to retirement benefits during the DROP period; and

(j) Any officer who became a member on or after July 1, 2016, is specifically prohibited from participating in DROP.

**Source:** Laws 2007, LB324, § 3; Laws 2011, LB509, § 43; Laws 2012, LB916, § 32; Laws 2013, LB263, § 34; Laws 2016, LB467, § 8.

## ARTICLE 21

### STATE ELECTRICAL DIVISION

Section	
81-2102.	Terms, defined.
81-2104.	State Electrical Board; powers enumerated.
81-2107.	Electrical contractor license; applicant; qualifications; Class B electrical contractor license and Class B master electrician license; restriction on license.
81-2109.	Journeyman electrician license; residential journeyman electrician license; qualifications; Class B journeyman electrician license; restriction on license.
81-2110.	Installer; license; rights and privileges.
81-2113.	Apprentice electrician; registration; supervision; renewal; continuing education.
81-2117.01.	License or registration renewal; continuing education required; instructor and course approval; certificate of attendance.
81-2118.	Licenses and registrations; expiration; fees.

#### **81-2102 Terms, defined.**

For purposes of the State Electrical Act, unless the context otherwise requires:

(1) Apprentice electrician means any person, other than a licensee, who, as such person's principal occupation, is engaged in learning and assisting in the installation, alteration, and repair of electrical equipment as an employee of a licensee and who is registered with the board. For purposes of this subdivision, persons who are not engaged in the installation, alteration, or repair of electrical wiring and apparatus, either inside or outside buildings, shall not be considered apprentice electricians;

(2) Board means the State Electrical Board;

(3) Class A master electrician means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation of wiring, apparatus, and equipment for electric light, heat, power, and other purposes and who is licensed by the board;

(4) Class B electrical contractor means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, install, and supervise the installation of wiring, apparatus, and equipment for systems of not over four hundred ampere capacity for light, heat, power, and other purposes in any structure used and maintained as a residential dwelling but not larger than a four-family dwelling located in any municipality which has a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and who is licensed by the board;

(5) Class B journeyman electrician means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment for systems of not over four hundred ampere capacity for light, heat, power, and other purposes in any structure used and maintained as a residential dwelling but not larger than a four-family dwelling located in any municipality which has a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and who is licensed by the board;

(6) Class B master electrician means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation of wiring, apparatus, and equipment for systems of not over four hundred ampere capacity for light, heat, power, and other purposes in any structure used and maintained as a residential dwelling but not larger than a four-family dwelling located in any municipality which has a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and who is licensed by the board;

(7) Commercial installation means an installation intended for commerce, but does not include a residential installation;

(8) Electrical contractor means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, install, and supervise the installation of wiring, apparatus, and equipment for electric light, heat, power, and other purposes and who is licensed by the board;

(9) Fire alarm installer means any person having the necessary qualifications, training, and experience to plan, lay out, and install electrical wiring, apparatus, and equipment for only those components of fire alarm systems that operate at fifty volts or less and who is licensed by the board;

(10) Industrial installation means an installation intended for use in the manufacture or processing of products involving systematic labor or habitual employment and includes installations in which agricultural or other products are habitually or customarily processed or stored for others, either by buying or reselling on a fee basis;

(11) Installer means a person who has the necessary qualifications, training, experience, and technical knowledge to properly lay out and install electrical wiring, apparatus, and equipment for major electrical home appliances on the load side of the main service in any municipality which has a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and who is licensed by the board;

(12) Inspector means a person certified as an electrical inspector upon such reasonable conditions as may be adopted by the board. The board may permit more than one class of electrical inspector;

(13) Journeyman electrician means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment and to supervise apprentice electricians and who is licensed by the board;

(14) New electrical installation means the installation of wiring, apparatus, and equipment for electric light, heat, power, and other purposes;

(15) Public-use building or facility means any building or facility designated for public use;

(16) Residential installation means an installation intended for a single-family or two-family residential dwelling or a multi-family residential dwelling not larger than three stories in height;

(17) Residential journeyman electrician means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment for residential installations and to supervise apprentice electricians and who is licensed by the board;

(18) Routine maintenance means the repair or replacement of existing electrical apparatus and equipment of the same size and type for which no changes in wiring are made; and

(19) Special electrician means a person having the necessary qualifications, training, and experience in wiring or installing special classes of electrical wiring, apparatus, equipment, or installations which shall include irrigation system wiring, well pump wiring, air conditioning and refrigeration installation, and sign installation and who is licensed by the board.

**Source:** Laws 1975, LB 525, § 2; Laws 1978, LB 833, § 2; Laws 1981, LB 67, § 1; R.S.Supp., 1981, § 81-572; Laws 1993, LB 193, § 2; Laws 2003, LB 126, § 2; Laws 2004, LB 914, § 1; Laws 2017, LB113, § 60.

#### **81-2104 State Electrical Board; powers enumerated.**

The board shall have power to:

- (1) Elect its own officers;
- (2) Engage and fix the compensation of such officers, inspectors, and employees as may be required in the performance of its duties;
- (3) Pay such other expenses as may be necessary in the performance of its duties;
- (4) Provide upon request such additional voluntary inspections and reviews as it deems appropriate;
- (5) Adopt, promulgate, and revise rules and regulations necessary to enable it to carry into effect the State Electrical Act. In adopting and promulgating such rules and regulations, the board shall be governed by the minimum standards set forth in the National Electrical Code issued and adopted by the National Fire Protection Association in 2017, Publication Number 70-2017, which code shall be filed in the offices of the Secretary of State and the board and shall be a public record. The board shall adopt and promulgate rules and regulations establishing wiring standards that protect public safety and health and property and that apply to all electrical wiring which is installed subject to the State Electrical Act;
- (6) Revoke, suspend, or refuse to renew any license or registration granted pursuant to the State Electrical Act when the licensee or registrant (a) violates any provision of the National Electrical Code as adopted pursuant to subdivision (5) of this section, the act, or any rule or regulation adopted and promulgated pursuant to the act, (b) fails or refuses to pay any examination, registration, or license renewal fee required by law, (c) is an electrical contractor or master electrician and fails or refuses to provide and keep in force a

public liability insurance policy as required by the board, or (d) violates any political subdivision's approved inspection ordinances;

(7) Order disconnection of power to any electrical installation that is proximately dangerous to health and property;

(8) Order removal of electrical wiring and apparatus from premises when such wiring and apparatus is proximately dangerous to health and property;

(9) Investigate, for the purpose of identifying dangerous electrical wiring or violations of the National Electrical Code as adopted pursuant to subdivision (5) of this section, any death by electrocution that occurs within the State of Nebraska;

(10) Refuse to renew any license granted pursuant to the act when the licensee fails to submit evidence of completing the continuing education requirements under section 81-2117.01;

(11) Provide for the amount and collection of fees for inspection and other services;

(12) Adopt a seal, and the executive secretary shall have the care and custody thereof; and

(13) Enforce the provisions of the National Electrical Code as adopted pursuant to subdivision (5) of this section.

**Source:** Laws 1975, LB 525, § 5; Laws 1978, LB 906, § 1; Laws 1978, LB 833, § 3; Laws 1981, LB 77, § 1; R.S.Supp., 1981, § 81-575; Laws 1984, LB 946, § 1; Laws 1987, LB 69, § 1; Laws 1990, LB 863, § 1; Laws 1993, LB 215, § 2; Laws 1993, LB 193, § 4; Laws 1993, LB 192, § 1; Laws 1996, LB 933, § 1; Laws 1999, LB 91, § 1; Laws 2002, LB 873, § 1; Laws 2003, LB 126, § 4; Laws 2005, LB 201, § 1; Laws 2010, LB411, § 1; Laws 2011, LB56, § 1; Laws 2014, LB863, § 28; Laws 2017, LB455, § 1.

**81-2107 Electrical contractor license; applicant; qualifications; Class B electrical contractor license and Class B master electrician license; restriction on license.**

(1) An applicant for an electrical contractor license shall (a) be a graduate of a four-year electrical course in an accredited college or university, (b) have at least one year's experience, acceptable to the board, as a journeyman electrician, or (c) have at least five years' experience, acceptable to the board, in planning for, laying out, supervising, and installing wiring, apparatus, or equipment for electrical light, heat, and power.

(2) A Class B electrical contractor license and a Class B master electrician license shall be valid only in regard to systems of not over four hundred amperes in capacity in structures used and maintained as residential dwellings but not larger than four-family dwellings located in any municipality which has a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

**Source:** Laws 1975, LB 525, § 9; Laws 1978, LB 833, § 6; R.S.Supp., 1980, § 81-578; Laws 1993, LB 193, § 7; Laws 2003, LB 126, § 6; Laws 2017, LB113, § 61.



**81-2109 Journeyman electrician license; residential journeyman electrician license; qualifications; Class B journeyman electrician license; restriction on license.**

(1) An applicant for a journeyman electrician license shall have at least four years' experience, acceptable to the board, in the electrical trade. Registration as an apprentice electrician for those years shall, on the approval of the board, constitute evidence of such experience. The board may by rule or regulation provide for the allowance of one year of experience credit for successful completion of a two-year post-high school electrical course approved by the board.

(2) On and after July 16, 2004, an applicant for a residential journeyman electrician license shall have at least three years' experience, acceptable to the board, in the electrical trade. Registration as an apprentice electrician for those years shall, on the approval of the board, constitute evidence of such experience. The board may by rule or regulation provide for the allowance of one year of experience credit for successful completion of a two-year post-high school electrical course approved by the board. A residential journeyman electrician license shall be valid only for residential installations.

(3) A Class B journeyman electrician license shall be valid only for electrical systems of not over four hundred amperes in capacity in structures used and maintained as residential dwellings but not larger than four-family dwellings located in any municipality which has a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

**Source:** Laws 1975, LB 525, § 10; R.S.1943, (1976), § 81-580; Laws 1993, LB 193, § 9; Laws 2004, LB 914, § 3; Laws 2017, LB113, § 62.

**81-2110 Installer; license; rights and privileges.**

Any person holding an installer license may lay out and install electrical wiring, apparatus, and equipment for major electrical home appliances on the load side of the main service in any municipality having a population of less than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

**Source:** Laws 1975, LB 525, § 11; R.S.1943, (1976), § 81-581; Laws 1993, LB 193, § 10; Laws 2017, LB113, § 63.

**81-2113 Apprentice electrician; registration; supervision; renewal; continuing education.**

(1) A person may register with the board and pay a fee as provided in section 81-2118 to work as an apprentice electrician. Such registration shall entitle the registrant to act as an apprentice electrician to a Class B electrical contractor, an electrical contractor, a Class B journeyman electrician, a journeyman electrician, a residential journeyman electrician, a Class A master electrician, or a Class B master electrician as provided in subsection (2) of this section. At the time of registration renewal, an apprentice shall present documentary evidence of successful completion of the requisite hours of continuing education courses under section 81-2117.01 and pay the fee for renewal provided by section 81-2118. If an applicant for renewal fails to complete the required

hours and submit the evidence to the board, the board shall assess up to a six-month increase of required experience necessary for the applicant to qualify for the examination under section 81-2115.

(2) An apprentice electrician shall do no electrical wiring except under the direct personal on-the-job supervision and control and in the immediate presence of a licensee under the State Electrical Act. Such supervision shall include both on-the-job training and related classroom training as approved by the board. The licensee may employ or supervise apprentice electricians at a ratio not to exceed three apprentice electricians to one licensee, except that such ratio and the other requirements of this section shall not be applicable to a teacher-student relationship within a classroom of a community college.

For purposes of this section, the direct personal on-the-job supervision and control and in the immediate presence of a licensee shall mean the licensee and the apprentice electrician shall be working at the same project location but shall not require that the licensee and apprentice electrician must be within sight of one another at all times.

(3) An apprentice electrician shall not install, alter, or repair electrical equipment except as provided in this section, and the licensee employing or supervising an apprentice electrician shall not authorize or permit such actions by the apprentice electrician.

**Source:** Laws 1975, LB 525, § 14; Laws 1981, LB 67, § 2; R.S.Supp.,1981, § 81-584; Laws 1993, LB 193, § 12; Laws 2003, LB 126, § 8; Laws 2004, LB 914, § 4; Laws 2015, LB179, § 1.

**81-2117.01 License or registration renewal; continuing education required; instructor and course approval; certificate of attendance.**

(1) In order to renew a license or registration issued under the State Electrical Act, the licensee or registrant shall be required to complete twelve contact hours of continuing education by January 1 of each odd-numbered year. The continuing education courses shall be approved by the board and may consist of training programs, courses, and seminars by the State Electrical Division or public or private schools, organizations, or associations. The contact hours shall include a minimum of six contact hours studying the National Electrical Code described in section 81-2104, and the remaining contact hours may include study of electrical circuit theory, blueprint reading, transformer and motor theory, electrical circuits and devices, control systems, programmable controllers, and microcomputers or any other study of electrical-related material that is approved by the board. Any additional hours studying the National Electrical Code shall be acceptable. For purposes of this section, a contact hour means fifty minutes of classroom attendance at an approved course under a qualified instructor approved by the board.

(2) An application for approval of the instructor and course offering shall be submitted annually on a form provided by the board. The approval by the board of the application shall be valid for one calendar year from the date of approval and shall include the following information:

(a) Name of the sponsoring organization or school, if any, the address of such organization or school, and the name of the contact person;

(b) The instructor's name, address, and telephone number;

- (c) The title of the course offering;
- (d) A description of all materials to be distributed to the participants;
- (e) The date and exact location of each presentation of the course offering;
- (f) The duration and time of the offering;
- (g) A detailed outline of the subject matter together with the time sequence of each segment, faculty for each segment, and teaching technique used in each segment;
- (h) The procedure for measuring attendance; and
- (i) A description of the faculty, including name, background, and practical or teaching experience. A complete resume may be furnished.

Any application for approval of the instructor and course offering that is rejected shall be returned to the applicant with specific reasons for such rejection and stating what is needed for approval.

(3) If a continuing education course is approved, the licensee or registrant shall retain the attendance certificate and attach it to the application for renewal of his or her license or registration at the time of renewal. The licensee or registrant shall have the responsibility for record keeping and providing proof of attendance at continuing education courses.

(4) The instructor of each course shall provide an individual certificate of attendance to each licensee or registrant who attends ninety percent or more of the classroom hours. A certificate of attendance shall not be issued to a licensee or registrant who is absent for more than ten percent of the classroom hours. The certificate shall contain the licensee's or registrant's name and license or registration number, the course title, the date and location of the course, the number of credit hours, and the signature of the instructor.

(5) Nothing in this section shall be construed to mean that a registrant shall be denied renewal of a registration by the board based solely on a failure to complete the continuing education requirement under subsection (1) of this section.

**Source:** Laws 1993, LB 193, § 16; Laws 1993, LB 215, § 3; Laws 2015, LB179, § 2.

### **81-2118 Licenses and registrations; expiration; fees.**

All licenses or registrations issued under the State Electrical Act shall expire on December 31 of each even-numbered year. All license or registration applications shall include the applicant's social security number. The board shall establish the fees to be payable for examination, issuance, and renewal in amounts not to exceed:

- (1) For examination:
  - (a) Electrical contractor, one hundred twenty-five dollars;
  - (b) Journeyman electrician, sixty dollars;
  - (c) Residential journeyman electrician, sixty dollars; and
  - (d) Fire alarm installer, sixty dollars;
- (2) For each year of the two-year license period for issuance and renewal:
  - (a) Electrical contractor, one hundred twenty-five dollars; and

(b) Journeyman electrician, residential journeyman electrician, fire alarm installer, or special electrician, twenty-five dollars;

(3) For each year of the two-year registration period for issuance and renewal as an apprentice electrician, twenty dollars; and

(4) For renewal on or after September 9, 1993, of the following licenses issued prior to such date for each year of the two-year license period:

(a) Class B electrical contractor, one hundred twenty-five dollars;

(b) Class A master electrician, one hundred twenty-five dollars;

(c) Class B master electrician, one hundred twenty-five dollars; and

(d) Class B journeyman electrician, installer, or special electrician, twenty-five dollars.

The holder of an expired license or registration may renew the license or registration for a period of three months from the date of expiration upon payment of the license or registration fee plus ten percent of the renewal fee for each month or portion thereof past the expiration date. All holders of licenses or registrations expired for more than three months shall apply for a new license or registration.

**Source:** Laws 1975, LB 525, § 19; Laws 1978, LB 833, § 7; R.S.Supp.,1980, § 81-589; Laws 1984, LB 841, § 1; Laws 1993, LB 193, § 18; Laws 1997, LB 752, § 229; Laws 2003, LB 126, § 11; Laws 2004, LB 914, § 5; Laws 2015, LB179, § 3.

**ARTICLE 22**

**AGING SERVICES**

(a) NEBRASKA COMMUNITY AGING SERVICES ACT

Section

- 81-2201. Act, how cited.
- 81-2210. Community aging services, defined.
- 81-2213. Department; powers and duties relating to aging.
- 81-2218. Area agency on aging; governing unit; duties.
- 81-2220. Area agency on aging; duties.
- 81-2221. Area plan and budget; contents.
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(b) CARE MANAGEMENT SERVICES

- 81-2233. Repealed. Laws 2017, LB417, § 25.
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(c) LONG-TERM CARE OMBUDSMAN

- 81-2237. Act, how cited.
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- 81-2279. Senior volunteers; benefits.
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(a) NEBRASKA COMMUNITY AGING SERVICES ACT

**81-2201 Act, how cited.**

Sections 81-2201 to 81-2227 shall be known and may be cited as the Nebraska Community Aging Services Act.

**Source:** Laws 1982, LB 404, § 1; Laws 1991, LB 58, § 3; Laws 2016, LB698, § 28.

**81-2210 Community aging services, defined.**

Community aging services means those activities and services which fulfill the goals of the Nebraska Community Aging Services Act, which are necessary to promote, restore, or support self-sufficiency and independence for older persons, and which include: (1) Congregate activities, including, but not limited to, senior centers, group meals, volunteerism, adult day services, and recreation; and (2) individual services, including, but not limited to, specialized transportation, meals-on-wheels, home handyman services, home health care services, legal services, counseling related to problems of aging or encouraging access to aging services, and senior volunteer services.

**Source:** Laws 1982, LB 404, § 10; Laws 1991, LB 58, § 10; Laws 2000, LB 819, § 156; Laws 2000, LB 1101, § 1; Laws 2017, LB417, § 17.

**81-2213 Department; powers and duties relating to aging.**

The department shall have the following powers and duties:

(1) To develop, approve, and submit to the Governor a two-year, three-year, or four-year state plan on aging, as determined by the department, for purposes of administering grant funds allocated to the state under the federal Older Americans Act of 1965, as such act existed on January 1, 2016, or administering state funds allocated to the Nebraska Community Aging Services Act;

(2) To cooperate with similar departments, commissions, or councils in the federal government and in other states;

(3) To adopt and promulgate rules, regulations, and bylaws governing its procedure and activities and as necessary to carry out the policies of the department and the policies prescribed by the Administration on Aging pursuant to the federal Older Americans Act of 1965, as such act existed on January 1, 2016;

(4) To create committees to aid in the discharge of its powers and duties;

(5) To cooperate with and assist other state and local governmental agencies and officials on matters relating to services for older individuals;

(6) To divide the state into planning-and-service areas as provided in section 71-807 for behavioral health regions, except that Regions 3 and 5 may each be divided into two planning-and-service areas with boundaries as established by the department for planning-and-service areas in existence in those regions on July 1, 1982;

(7) To establish minimum standards for program operations and to adopt and promulgate rules and regulations for the performance of area agencies on aging and for any services provided by such area agencies on aging which are funded in whole or in part under the Nebraska Community Aging Services Act or the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016;

(8) To require the submission of a two-year, three-year, or four-year area plan and budget by each area agency on aging or agency seeking designation as an area agency on aging. Such plans and budgets shall be submitted sixty days prior to the start of each fiscal year in accordance with the uniform area plan format and other instructions issued by the department;

(9) To review and approve a two-year, three-year, or four-year area plan and budget for the support of each area agency on aging and the provision of eligible activities and services as defined in section 81-2222;

(10) To adopt and submit electronically to the Legislature a community aging services budget;

(11) To review the performance of each area agency on aging and, based on the department-approved area plan and budget, to determine the continued designation or the withdrawal of the designation of an area agency on aging receiving or requesting resources through the state or under the Nebraska Community Aging Services Act or the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016. After consultation with the director of the area agency on aging and the governing unit of the area agency on aging, the department may withdraw a designation when it can be shown that federal or state laws, rules, or regulations have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or older individuals are not receiving appropriate services within available resources. Withdrawal of a designation may be appealed to the department. Upon withdrawal of a designation, the department may temporarily perform all or

part of the functions and responsibilities of the area agency on aging, may designate another agency to perform such functions and responsibilities identified by the department until the designation of a new area agency on aging, and, when deemed necessary, may temporarily deliver services to assure continuity;

(12) To conduct continuing studies and analyses of the problems faced by older individuals within the state and develop such recommendations for administrative or legislative action as appear necessary;

(13) To develop grants and plans, enter into contracts, accept gifts, grants, and federal funds, and do all things necessary and proper to discharge these powers and duties;

(14) To accept and administer any other programs or resources delegated, designated, assigned, or awarded to the department from public or private sources; and

(15) Such other powers and duties necessary to effectively implement the Nebraska Community Aging Services Act.

**Source:** Laws 1982, LB 404, § 13; Laws 1991, LB 58, § 15; Laws 1993, LB 818, § 1; Laws 1996, LB 1044, § 873; Laws 2004, LB 1083, § 128; Laws 2007, LB296, § 764; Laws 2012, LB782, § 213; Laws 2013, LB222, § 39; Laws 2016, LB698, § 29.

**81-2218 Area agency on aging; governing unit; duties.**

The governing unit of the designated area agency on aging shall:

(1) In accordance with section 81-2219, employ a qualified administrator to serve as the chief executive officer for the administration of the agency and employ adequate staff for carrying out the area program plan;

(2) Approve and submit an area plan and budget to the department pursuant to section 81-2213. The plan shall comply with the requirements of the Nebraska Community Aging Services Act and the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016;

(3) Approve such contracts and agreements as are necessary to carry out the functions of the agency; and

(4) Establish and consult with an area advisory council on needs, services, and policies affecting older individuals in the area. The advisory council for the area agency on aging shall establish bylaws which specify the role and functions of the council, number of members, selection of members, term of membership, and frequency of meetings.

**Source:** Laws 1982, LB 404, § 18; Laws 1991, LB 58, § 20; Laws 2016, LB698, § 30.

**81-2220 Area agency on aging; duties.**

An area agency on aging shall:

(1) Monitor, evaluate, and comment on policies, programs, hearings, and community actions which affect older individuals;

(2) Conduct public hearings, studies, and assessments on the needs of older individuals living in the planning-and-service area;

(3) Represent the interests of older individuals to public officials and to public and private agencies or organizations;

(4) Cooperate, coordinate, and plan with other agencies, organizations, or individuals to promote benefits and opportunities for older individuals consistent with the goals of the Nebraska Community Aging Services Act and the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016;

(5) Develop an area plan and budget pursuant to section 81-2213 for a comprehensive, coordinated program of community aging services needed by older individuals of the area and consistent with the requirements of the Nebraska Community Aging Services Act and the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016;

(6) Monitor and evaluate the activities of service providers to ensure that the services being provided comply with the terms of the grant or contract. When a provider is found to be in breach of the terms of its grant or contract, the area agency on aging shall enforce the terms of the grant or contract;

(7) Comply with rules, regulations, and requirements of the department which have been developed in consultation with the area agencies on aging for client and fiscal information and provide to the department information necessary for federal and state reporting, program evaluation, program management, fiscal control, and research needs; and

(8) Provide technical assistance to service providers as needed, prepare written monitoring reports, and provide written reports of onsite assessments of all service providers funded by the area agency on aging according to the rules and regulations promulgated by the department.

**Source:** Laws 1982, LB 404, § 20; Laws 1991, LB 58, § 22; Laws 2016, LB698, § 31.

#### **81-2221 Area plan and budget; contents.**

The plan and budget adopted pursuant to section 81-2220 shall contain at least the following:

(1) Provisions required by the Nebraska Community Aging Services Act and the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016; and

(2) A detailed statement of the manner in which the area agency on aging develops, administers, and supports the comprehensive, coordinated program of community aging services throughout the area.

The department may require minimum service levels for the area and establish minimum standards for activities which carry out the requirements of the Nebraska Community Aging Services Act and the federal Older Americans Act of 1965, as such federal act existed on January 1, 2016.

**Source:** Laws 1982, LB 404, § 21; Laws 1991, LB 58, § 23; Laws 2016, LB698, § 32.

#### **81-2225 Reimbursement for costs; qualification.**

To qualify for reimbursement by the department, as provided for in section 81-2224, a designated area agency on aging shall have a department-approved plan and budget and shall provide no less than twenty-five percent of such approved plan and budget from local sources. Local sources shall include, but shall not be limited to, local tax dollars and donations and shall not include



receipts from federal or state sources, except federal revenue-sharing trust funds.

**Source:** Laws 1982, LB 404, § 25; Laws 2018, LB903, § 1.  
Effective date April 12, 2018.

**81-2227 Department; submit budget.**

Based upon the department-approved plan and budget for each designated area agency on aging, the department shall submit a budget request to the Department of Administrative Services, on or before the date provided in subsection (1) of section 81-132 for each even-numbered year, for the funds required to achieve the objectives of the Nebraska Community Aging Services Act. Such request shall include all federal funds available to the department for reimbursement to area agencies on aging.

**Source:** Laws 1982, LB 404, § 27; Laws 1991, LB 58, § 28; Laws 2002, Second Spec. Sess., LB 12, § 4; Laws 2016, LB1092, § 6.

**81-2228 Repealed. Laws 2016, LB698, § 37.**

(b) CARE MANAGEMENT SERVICES

**81-2233 Repealed. Laws 2017, LB417, § 25.**

**81-2235 Care management unit; reimbursement by department.**

(1) Each care management unit may be reimbursed by the Department of Health and Human Services for costs not paid for by the individual or through other reimbursement specified in section 81-2234. Reimbursement by the department shall be based on actual casework time units expended on all care management services provided and shall include expenses for personnel, administration and planning, client eligibility review, contractual services, and necessary support services and other necessary actual and indirect costs. Standardized rates of reimbursement shall be adopted and promulgated by the department and shall be adjusted at least every three years.

(2) Appropriations for reimbursement by the department for services provided under sections 81-2229 to 81-2235 and for the costs of the department to administer the program shall be appropriated separately from funds appropriated under the Nebraska Community Aging Services Act.

**Source:** Laws 1987, LB 42, § 7; Laws 1996, LB 1044, § 881; Laws 2016, LB698, § 33.

**Cross References**

Nebraska Community Aging Services Act, see section 81-2201.

(c) LONG-TERM CARE OMBUDSMAN

**81-2237 Act, how cited.**

Sections 81-2237 to 81-2264 shall be known and may be cited as the Long-Term Care Ombudsman Act.

**Source:** Laws 1992, LB 677, § 1; Laws 2018, LB903, § 2.  
Effective date April 12, 2018.

**Cross References**

Adult Protective Services Act, see section 28-348.

**81-2238 Definitions, where found.**

For purposes of the Long-Term Care Ombudsman Act, the definitions found in sections 81-2239 to 81-2248 shall be used.

**Source:** Laws 1992, LB 677, § 2; Laws 2018, LB903, § 3.  
Effective date April 12, 2018.

**81-2239 Department, defined.**

Department means the Department of Health and Human Services.

**Source:** Laws 1992, LB 677, § 3; Laws 1996, LB 1044, § 882; Laws 2018, LB903, § 4.  
Effective date April 12, 2018.

**81-2242 Local long-term care ombudsman program, defined.**

Local long-term care ombudsman program means an entity, either public or private and nonprofit, designated as a local long-term care ombudsman program by the office.

**Source:** Laws 1992, LB 677, § 6; Laws 2018, LB903, § 5.  
Effective date April 12, 2018.

**81-2243 Long-term care facility, defined.**

Long-term care facility includes:

- (1) A nursing facility;
- (2) An assisted-living facility;
- (3) Any other adult care home;
- (4) A continuing care community;
- (5) Any swing bed in an acute care facility or extended care facility; and
- (6) Any adult day service.

**Source:** Laws 1992, LB 677, § 7; Laws 1997, LB 608, § 26; Laws 2000, LB 819, § 157; Laws 2018, LB903, § 6.  
Effective date April 12, 2018.

**81-2244 Office, defined.**

Office means the office of the state long-term care ombudsman.

**Source:** Laws 1992, LB 677, § 8; Laws 2018, LB903, § 7.  
Effective date April 12, 2018.

**81-2245 Older Americans Act, defined.**

Older Americans Act means the federal Older Americans Act, as amended.

**Source:** Laws 1992, LB 677, § 9; Laws 2018, LB903, § 8.  
Effective date April 12, 2018.

**81-2246 Transferred to section 81-2247.02.****81-2247 Ombudsman advocate, defined.**

Ombudsman advocate means an employee or a volunteer of the office other than the state long-term care ombudsman or of a local program trained and certified to carry out duties of the office.

**Source:** Laws 1992, LB 677, § 11; Laws 2018, LB903, § 9.  
Effective date April 12, 2018.

**81-2247.01 Representative of the office, defined.**

Representative of the office means an employee or volunteer designated by the state long-term care ombudsman to fulfill the duties of the office, whether personnel supervision is provided by the state long-term care ombudsman or his or her designee or by an agency hosting a local long-term care ombudsman designated by the state long-term care ombudsman.

**Source:** Laws 2018, LB903, § 10.  
Effective date April 12, 2018.

**81-2247.02 Resident, defined.**

Resident means an individual who resides in a long-term care facility as a patient, resident, or client.

**Source:** Laws 1992, LB 677, § 10; R.S.1943, (2014), § 81-2246; Laws 2018, LB903, § 11.  
Effective date April 12, 2018.

**81-2247.03 Resident representative, defined.**

Resident representative means:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decisionmaking; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or

(2) A person authorized by state or federal law, including, but not limited to, agents under a power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decisionmaking; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.

**Source:** Laws 2018, LB903, § 12.  
Effective date April 12, 2018.

**81-2248 State long-term care ombudsman, defined.**

State long-term care ombudsman means the person appointed under section 81-2249 to fulfill the responsibilities of the office.

**Source:** Laws 1992, LB 677, § 12; Laws 2007, LB296, § 767; Laws 2018, LB903, § 13.  
Effective date April 12, 2018.

**81-2250 Long-term care ombudsman program; established; contents.**

The department shall establish a long-term care ombudsman program consisting of the state long-term care ombudsman and any local long-term care ombudsman programs. The program shall:

(1) Investigate and resolve complaints made by or on behalf of residents relating to action, inaction, or decisions of providers of long-term care services or their representatives, of public agencies, or of social service agencies which may adversely affect the health, safety, welfare, or rights of residents. The office shall implement procedures to ensure that no state long-term care ombudsman or ombudsman advocate investigates any complaint involving a provider with which the representative was once employed or associated;

(2) Provide for the training of the state long-term care ombudsman and ombudsman advocates and promote the development of citizen organizations to participate in the program, provide training to ombudsman advocates and staff of local long-term care ombudsman programs, issue certificates attesting to the successful completion of the prescribed training, and provide ongoing technical assistance to such local programs;

(3) Analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies with respect to long-term care facilities and services and recommend any changes in such laws, regulations, and policies deemed by the long-term care ombudsman program to be appropriate;

(4) Establish a statewide, uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The data shall be submitted to the department at least on an annual basis;

(5) Prepare reports and provide policy, regulatory, and legislative recommendations to solve problems, resolve complaints, and improve the quality of care and life in long-term care facilities;

(6) Provide for public forums to discuss concerns and problems relating to action, inaction, or decisions that may adversely affect the health, safety, welfare, or civil rights of residents and resident representatives, public agencies and entities, and social service agencies; and

(7) Provide information to public agencies, legislators, and others regarding the problems and concerns, including recommendations related to such problems and concerns, of residents.

**Source:** Laws 1992, LB 677, § 14; Laws 1996, LB 1044, § 884; Laws 2007, LB296, § 769; Laws 2018, LB903, § 14.  
Effective date April 12, 2018.

#### **81-2251 Rules and regulations; state long-term care ombudsman; qualifications.**

The department may adopt and promulgate rules and regulations to carry out the Long-Term Care Ombudsman Act. The department shall ensure that the state long-term care ombudsman has no conflicts of interest in fulfilling the duties of the office, is capable of administering the office impartially, has an understanding of long-term care issues, has experience in the fields of aging and health care, and has worked with and been involved in volunteer programs.

**Source:** Laws 1992, LB 677, § 15; Laws 2007, LB296, § 770; Laws 2018, LB903, § 15.  
Effective date April 12, 2018.

**81-2252 Local long-term care ombudsman programs; designation; provisional status.**

The office may designate for two-year periods, within each planning-and-service area designated pursuant to section 81-2213, local long-term care ombudsman programs.

The office may withdraw or provisionally maintain the designation of an entity as a local long-term care ombudsman program. If the designation of a local long-term care ombudsman program is provisionally maintained, the office shall notify the program of the reasons for the provisional status, of the changes or corrections necessary for the removal of the provisional status, of the length of time permitted to make the changes or corrections, and that the office will withdraw the designation if the program does not comply with the requirements specified in the notice. If the designation of a local long-term care ombudsman program is withdrawn, the office may provide for the continuation of long-term care ombudsman services for that area.

**Source:** Laws 1992, LB 677, § 16; Laws 2007, LB296, § 771; Laws 2018, LB903, § 16.  
Effective date April 12, 2018.

**81-2253 Staff training requirements; ombudsman advocate certification; required.**

(1) The state long-term care ombudsman shall ensure that the staff of the office and of local long-term care ombudsman programs are trained in:

- (a) Federal, state, and local laws, regulations, and policies with respect to long-term care facilities in the state;
- (b) Investigative techniques;
- (c) Management of long-term care facilities; and
- (d) Such other matters as the office deems appropriate.

(2) The state long-term care ombudsman shall develop procedures for the certification of ombudsman advocates.

(3) No ombudsman advocate shall investigate any complaint filed with the office unless such person is certified by the office.

**Source:** Laws 1992, LB 677, § 17; Laws 2018, LB903, § 17.  
Effective date April 12, 2018.

**81-2254 Office; investigations; procedure.**

The office shall investigate and seek to resolve complaints and concerns communicated by or on behalf of a resident. The office may initiate investigations based on its observations of the conditions in a long-term care facility. If the office does not investigate a complaint, the complainant shall be notified of the decision not to investigate and the reasons for the decision.

**Source:** Laws 1992, LB 677, § 18; Laws 2018, LB903, § 18.  
Effective date April 12, 2018.

**81-2255 Abuse, neglect, or exploitation; referral required; procedure.**

(1) Notwithstanding any other provision of law related to reporting, when abuse, neglect, or exploitation of a resident is suspected, the long-term care ombudsman program, with the permission of the resident or the resident

representative, shall make an immediate referral to adult protective services of the department or the appropriate law enforcement agency.

(2) Any state agency or board which responds to a complaint against a long-term care facility or an individual employed by a long-term care facility that was referred to the state agency or board by the office shall forward to the office copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the long-term care facility or the individual.

**Source:** Laws 1992, LB 677, § 19; Laws 1996, LB 1044, § 885; Laws 2007, LB296, § 772; Laws 2018, LB903, § 19.  
Effective date April 12, 2018.

**81-2258 Office; access to medical and personal records; liability for disclosure; confidentiality.**

(1) The office shall have access to the medical and personal records of a resident of a long-term care facility which are retained by the facility. If the resident:

(a) Has the ability to consent in writing or through the use of auxiliary aids and services, access may only be obtained by the written consent of the resident;

(b) Is unable to consent in writing or through the use of auxiliary aids and services, oral consent may be given;

(c) Is under guardianship or conservatorship that provides the guardian or conservator with the authority to approve review of records, the office shall obtain the permission of the guardian or conservator for review of the records unless (i) the existence of the guardianship or conservatorship is unknown to the office or the facility, (ii) the guardian or conservator cannot be reached within five working days, (iii) the subject of the complaint is the guardian or the conservator, or (iv) in case of an emergency;

(d) Has a resident representative other than a guardian or conservator as described in subdivision (c) of this subsection, the office shall obtain the permission of the resident representative for review of the records unless (i) the existence of the resident representative is unknown to the office or the facility, (ii) the resident representative cannot be reached within five working days, (iii) the subject of the complaint is the resident representative, or (iv) in case of emergency; and

(e) Is unable to express written or oral consent and there is no guardian, conservator, or other resident representative or the notification of the guardian, conservator, or other resident representative is not applicable for reasons set forth in subdivision (c) or (d) of this subsection or the resident is deceased, inspection of records may be made by the state long-term care ombudsman or representatives of the office.

(2) Copies of records may be reproduced by the office.

(3) Upon request by the office, a long-term care facility shall provide to the office the name, address, and telephone number of the resident representative or next of kin of a resident.

(4) The long-term care facility and personnel who disclose records pursuant to this section shall not be liable for the disclosure.

(5) The office shall establish procedures to protect the confidentiality of records obtained pursuant to this section.

**Source:** Laws 1992, LB 677, § 23; Laws 2018, LB903, § 20.  
Effective date April 12, 2018.

**81-2259 State long-term care ombudsman and ombudsman advocate; access to resident.**

A state long-term care ombudsman or an ombudsman advocate shall have immediate access to any consenting resident for the purpose of effectively carrying out the Long-Term Care Ombudsman Act if such state long-term care ombudsman or ombudsman advocate identifies himself or herself and presents his or her credentials to the individual in charge of the long-term care facility.

**Source:** Laws 1992, LB 677, § 22; Laws 2018, LB903, § 21.  
Effective date April 12, 2018.

**81-2260 Complaints or investigations; confidentiality; exceptions.**

(1) Information relating to any complaints or investigation made pursuant to the Long-Term Care Ombudsman Act that discloses the identities of complainants or residents shall remain confidential except:

(a) When disclosure is authorized in writing by the complainant, resident, or resident representative;

(b) When disclosure is necessary to an investigation of abuse, neglect, or exploitation and the disclosure is made to the Attorney General, the county attorney, or the department;

(c) When disclosure is necessary for the provision of services to the resident and the resident is unable to express written or oral consent; or

(d) Upon court order.

(2) Access to the records and files of the office relating to any complaint or investigation made pursuant to the Long-Term Care Ombudsman Act shall be permitted only at the discretion of the state long-term care ombudsman, except that the identity of any complainant, witness, or resident shall not be disclosed by such ombudsman except:

(a) When disclosure is authorized in writing by such complainant, witness, resident, or resident representative; or

(b) Upon court order.

**Source:** Laws 1992, LB 677, § 24; Laws 1996, LB 1044, § 886; Laws 2007, LB296, § 773; Laws 2018, LB903, § 22.  
Effective date April 12, 2018.

**81-2261 Department; duties.**

The department shall ensure that:

(1) No individual involved in the designation of the state long-term care ombudsman has a pecuniary or other interest in a long-term care facility;

(2) No state long-term care ombudsman or ombudsman advocate has a pecuniary or other interest in a long-term care facility;

(3) Mechanisms are in place to identify and remedy all such or other similar conflicts; and

(4) The office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents.

**Source:** Laws 1992, LB 677, § 25; Laws 2018, LB903, § 23.  
Effective date April 12, 2018.

**81-2262 Local long-term care ombudsman program and certified individual; treatment.**

Any local long-term care ombudsman program or any individual certified by the office, whether an employee of the program or office or an unpaid volunteer of the program or office, shall be treated as a representative of the office.

**Source:** Laws 1992, LB 677, § 26; Laws 2018, LB903, § 24.  
Effective date April 12, 2018.

**81-2264 Interference with lawful actions; institution of certain proceedings; prohibited; department; sanctions.**

(1) No person shall willfully interfere with the lawful actions of the office, including the request for immediate entry into a long-term care facility by an individual certified pursuant to section 81-2253 who identifies himself or herself and presents his or her credentials to the individual in charge of the long-term care facility.

(2) No person shall institute discriminatory, disciplinary, or retaliatory action against any officer or employee of a long-term care facility or governmental agency or against any resident, resident representative, or family member of a resident for any communications by him or her with the office or for any information given or disclosed by him or her in good faith to aid the office in carrying out its duties and responsibilities.

(3) The department shall implement mechanisms to prohibit, and investigate allegations of, interference, retaliation, and reprisals:

(a) By a long-term care facility, another entity, or an individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office; or

(b) By a long-term care facility, another entity, or an individual against the ombudsman or representatives of the office for fulfillment of their functions, responsibilities, or duties.

(4) The department shall provide for appropriate sanctions with respect to such interference, retaliation, and reprisals if verified by such investigation.

**Source:** Laws 1992, LB 677, § 28; Laws 2018, LB903, § 25.  
Effective date April 12, 2018.

(f) NEBRASKA SENIOR VOLUNTEER PROGRAM ACT

**81-2273 Act, how cited.**

Sections 81-2273 to 81-2283 shall be known and may be cited as the Nebraska Senior Volunteer Program Act.

**Source:** Laws 2000, LB 1101, § 2; Laws 2017, LB417, § 18.

**81-2274 Purpose of act.**



The purpose of the Nebraska Senior Volunteer Program Act is to provide volunteer community service opportunities for older persons following priorities outlined in the federal Older Americans Act of 1965, as the act existed on January 1, 2017.

**Source:** Laws 2000, LB 1101, § 3; Laws 2017, LB417, § 19.

**81-2275 Terms, defined.**

For purposes of the Nebraska Senior Volunteer Program Act:

- (1) Department means the Department of Health and Human Services; and
- (2) Senior volunteer means an individual who is sixty years of age or older.

**Source:** Laws 2000, LB 1101, § 4; Laws 2017, LB417, § 20.

**81-2276 Repealed. Laws 2017, LB417, § 25.**

**81-2277 Repealed. Laws 2017, LB417, § 25.**

**81-2278 Repealed. Laws 2017, LB417, § 25.**

**81-2279 Senior volunteers; benefits.**

(1) A senior volunteer may receive (a) transportation expenses for transportation to and from their residences and the place where services are to be rendered, (b) one free meal when reasonably available during each day that services are rendered, and (c) an annual physical examination.

(2) A senior volunteer shall receive motor vehicle accident and liability insurance coverage.

**Source:** Laws 2000, LB 1101, § 8; Laws 2017, LB417, § 21.

**81-2280 Repealed. Laws 2017, LB417, § 25.**

**81-2281 Grants; amount.**

(1) The department shall make annual grants in an amount not to exceed twenty-five thousand dollars.

(2) As a condition to receiving a grant, an applicant shall obtain at least ten percent matching funds from local sources.

**Source:** Laws 2000, LB 1101, § 10; Laws 2017, LB417, § 22.

**81-2283 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Senior Volunteer Program Act.

**Source:** Laws 2000, LB 1101, § 12; Laws 2017, LB417, § 23.

## ARTICLE 25

### COMMISSION ON INDIAN AFFAIRS

Section

81-2517. Native American Scholarship and Leadership Fund; created; use; investment.

**81-2517 Native American Scholarship and Leadership Fund; created; use; investment.**

The Native American Scholarship and Leadership Fund is created. The fund shall be administered by the Commission on Indian Affairs and shall consist of

money credited to the fund pursuant to section 60-3,235. The commission shall use the fund to provide scholarships to Native Americans to attend a postsecondary educational institution in this state and to provide other leadership opportunities to Native Americans as determined by the commission. 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 2017, LB263, § 100.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 28 RAILROAD RIGHT-OF-WAY

Section

81-2801. Railroad right-of-way; acquisition by state agency; approval of Legislature; exception.

**81-2801 Railroad right-of-way; acquisition by state agency; approval of Legislature; exception.**

No agency of this state shall purchase, lease, or acquire real estate from any railroad over a right-of-way outside of incorporated cities and villages which has been permitted to be abandoned by a federal agency without prior approval by the Legislature of such purchase, lease, or acquisition, except that (1) the Game and Parks Commission may acquire all or any part of a railroad right-of-way proposed to be abandoned for interim trail use pursuant to sections 37-303 and 37-914 and (2) the Department of Transportation may acquire such real estate solely for the purpose of highway construction or improvements when such right-of-way is adjacent to an existing state highway or when such right-of-way is needed to maintain existing improvements that have previously been located upon such right-of-way through agreements, easements, or leases. Real estate acquired by the department pursuant to this section which is in excess of that needed or is deemed no longer necessary shall be disposed of as provided for in section 39-1325.

**Source:** Laws 1971, LB 662, § 2; Laws 1983, LB 119, § 1; R.S.1943, (1990), § 74-424; Laws 1994, LB 414, § 4; Laws 1996, LB 584, § 21; Laws 1998, LB 922, § 410; Laws 2017, LB339, § 290.

## ARTICLE 29 STATE CIVIL OFFICERS

Section

81-2901. State civil offices; vacancy; how filled.

**81-2901 State civil offices; vacancy; how filled.**

Every state civil office filled by appointment shall be vacant upon the happening of any one of the events listed in section 32-560 except as provided in section 32-561. The resignation of the incumbent of such a civil office may be made as provided in section 32-562. Vacancies in such a civil office shall be filled as provided in sections 32-567 and 32-574 and shall be subject to section 32-563.

**Source:** Laws 1994, LB 76, § 609; Laws 2015, LB575, § 30.

## ARTICLE 31

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Section

- 81-3113. Department of Health and Human Services created; divisions.
- 81-3116. Responsibilities of divisions.
- 81-3119. Health and Human Services Cash Fund; created; transfer; investment.
- 81-3133. Division of Children and Family Services; reports; strategic plan; key goals; benchmarks; progress reports.
- 81-3133.01. Division of Behavioral Health; strategic plan; key goals; benchmarks; progress reports.
- 81-3133.02. Division of Developmental Disabilities; strategic plan; key goals; benchmarks; progress reports.
- 81-3133.03. Division of Medicaid and Long-Term Care; strategic plan; key goals; benchmarks; progress reports.
- 81-3139. Health Care Homes for the Medically Underserved Fund; created; purpose; investment.
- 81-3140. Health Care Homes for the Medically Underserved Fund; distribution; use.

**81-3113 Department of Health and Human Services created; divisions.**

The Department of Health and Human Services is created. The department shall have five divisions to be known as (1) the Division of Behavioral Health, (2) the Division of Children and Family Services, (3) the Division of Developmental Disabilities, (4) the Division of Medicaid and Long-Term Care, and (5) the Division of Public Health.

**Source:** Laws 2007, LB296, § 4; Laws 2017, LB340, § 18.

**81-3116 Responsibilities of divisions.**

The responsibilities of the divisions created in section 81-3113 include, but are not limited to, the following:

(1) The Division of Behavioral Health shall administer (a) the state hospitals for the mentally ill designated in section 83-305 and (b) publicly funded community-based behavioral health services;

(2) The Division of Children and Family Services shall administer (a) protection and safety programs and services, including child welfare programs and services and the Office of Juvenile Services, (b) economic and family support programs and services, and (c) service areas as may be designated by the chief executive officer or by the Director of Children and Family Services under authority of the chief executive officer, except that on and after September 1, 2012, the western, central, and northern service areas shall be aligned to be coterminous with the district court judicial districts described in section 24-301.02;

(3) The Division of Developmental Disabilities shall administer (a) the Beatrice State Developmental Center and (b) publicly funded community-based developmental disabilities services;

(4) The Division of Medicaid and Long-Term Care shall administer (a) the medical assistance program also known as medicaid, (b) aging services, and (c) other related programs and services; and

(5) The Division of Public Health shall administer (a) preventive and community health programs and services, (b) the regulation and licensure of health-

related professions and occupations, and (c) the regulation and licensure of health care facilities and health care services.

**Source:** Laws 2007, LB296, § 7; Laws 2012, LB961, § 4; Laws 2017, LB340, § 19.

**81-3119 Health and Human Services Cash Fund; created; transfer; investment.**

The Health and Human Services Cash Fund is created and shall consist of funds from contracts, grants, gifts, or fees. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer three hundred thousand dollars on or before July 15, 2015, from the Health and Human Services Cash Fund to the Lead-Based Paint Hazard Control Cash Fund. It is the intent of the Legislature that the transfer to the Lead-Based Paint Hazard Control Cash Fund shall be from funds credited to the Medicaid Fraud Settlement Fund. Any money in the Health and Human Services 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 2007, LB296, § 10; Laws 2008, LB961, § 6; Laws 2009, LB288, § 39; Laws 2009, First Spec. Sess., LB3, § 85; Laws 2013, LB199, § 38; Laws 2015, LB661, § 36.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-3133 Division of Children and Family Services; reports; strategic plan; key goals; benchmarks; progress reports.**

(1)(a) On or before July 30, 2012, the Division of Children and Family Services of the Department of Health and Human Services shall report in writing its expenditures between January 1, 2012, and June 30, 2012, and the outcomes relating to such expenditures to the Appropriations Committee of the Legislature and the Health and Human Services Committee of the Legislature. Such report shall identify any changes or movement of funds in excess of two hundred fifty thousand dollars relating to child welfare between subprograms within Budget Program 347 and Budget Program 354.

(b) Beginning with the third calendar quarter of 2012, the division shall report electronically its expenditures for each quarter and the outcomes relating to such expenditures within thirty days after the end of the quarter to the Appropriations Committee of the Legislature and the Health and Human Services Committee of the Legislature. Such report shall identify any changes or movement of funds in excess of two hundred fifty thousand dollars relating to child welfare between subprograms within Budget Program 347 and Budget Program 354.

(2)(a) For the biennium ending June 30, 2015, the biennium ending June 30, 2017, and the biennium ending June 30, 2019, the Division of Children and Family Services of the Department of Health and Human Services shall, as part of the appropriations request process pursuant to subsection (1) of section 81-132, include a strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the division believes are fair measures of its progress in meeting each program's main purpose or

purposes, and benchmarks for improving performance on the key goals for the state as a whole and for each Department of Health and Human Services service area designated pursuant to section 81-3116. The division shall also report whether the benchmarks are being met and, if not, the expected timeframes for meeting them. Such key goals and benchmarks shall be developed by the Division of Children and Family Services with the assistance of the budget division of the Department of Administrative Services pursuant to subdivision (3) of section 81-1113.

(b) Not later than September 15, 2013, not later than September 15, 2015, and not later than September 15, 2017, the Division of Children and Family Services of the Department of Health and Human Services shall report electronically to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature on the progress towards the key goals identified pursuant to this subsection that occurred in the previous twelve months. The division shall annually appear at a joint hearing of the two legislative committees and present the report.

(3) On or before December 1, 2016, and each year thereafter, the Division of Children and Family Services of the Department of Health and Human Services shall report electronically to the Governor and the Legislature the number of families in all transitional child care assistance programs and the number of families no longer eligible for all transitional child care assistance programs due to failure to meet income guidelines.

**Source:** Laws 2012, LB949, § 1; Laws 2013, LB222, § 40; Laws 2013, LB269, § 13; Laws 2014, LB974, § 15; Laws 2015, LB81, § 2; Laws 2016, LB1092, § 7.

**81-3133.01 Division of Behavioral Health; strategic plan; key goals; benchmarks; progress reports.**

(1) For the biennium ending June 30, 2017, and the biennium ending June 30, 2019, the Division of Behavioral Health of the Department of Health and Human Services shall, as part of the appropriations request process pursuant to subsection (1) of section 81-132, include a strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the division believes are fair measures of its progress in meeting each program's main purpose or purposes, and benchmarks for improving performance on the key goals. The division shall also report whether the benchmarks are being met and, if not, the expected timeframes for meeting them. Such key goals and benchmarks shall be developed by the division with the assistance of the budget division of the Department of Administrative Services pursuant to subdivision (3) of section 81-1113.

(2) Not later than September 15, 2015, and not later than September 15, 2017, the Division of Behavioral Health of the Department of Health and Human Services shall report electronically to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature on the progress towards the key goals identified pursuant to this section that occurred in the previous twelve months. The division shall annually appear at a joint hearing of the two legislative committees and present the report.

**Source:** Laws 2014, LB974, § 12; Laws 2016, LB1092, § 8.

**81-3133.02 Division of Developmental Disabilities; strategic plan; key goals; benchmarks; progress reports.**

(1) For the biennium ending June 30, 2017, and the biennium ending June 30, 2019, the Division of Developmental Disabilities of the Department of Health and Human Services shall, as part of the appropriations request process pursuant to subsection (1) of section 81-132, include a strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the division believes are fair measures of its progress in meeting each program's main purpose or purposes, and benchmarks for improving performance on the key goals. The division shall also report whether the benchmarks are being met and, if not, the expected timeframes for meeting them. Such key goals and benchmarks shall be developed by the division with the assistance of the budget division of the Department of Administrative Services pursuant to subdivision (3) of section 81-1113.

(2) Not later than September 15, 2015, and not later than September 15, 2017, the Division of Developmental Disabilities of the Department of Health and Human Services shall report electronically to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature on the progress towards the key goals identified pursuant to this section that occurred in the previous twelve months. The division shall annually appear at a joint hearing of the two legislative committees and present the report.

**Source:** Laws 2014, LB974, § 13; Laws 2016, LB1092, § 9.

**81-3133.03 Division of Medicaid and Long-Term Care; strategic plan; key goals; benchmarks; progress reports.**

(1) For the biennium ending June 30, 2017, and the biennium ending June 30, 2019, the Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall, as part of the appropriations request process pursuant to subsection (1) of section 81-132, include a strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the division believes are fair measures of its progress in meeting each program's main purpose or purposes, and benchmarks for improving performance on the key goals. The division shall also report whether the benchmarks are being met and, if not, the expected timeframes for meeting them. Such key goals and benchmarks shall be developed by the division with the assistance of the budget division of the Department of Administrative Services pursuant to subdivision (3) of section 81-1113.

(2) Not later than September 15, 2015, and not later than September 15, 2017, the Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall report electronically to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature on the progress towards the key goals identified pursuant to this section that occurred in the previous twelve months. The division shall annually appear at a joint hearing of the two legislative committees and present the report.

**Source:** Laws 2014, LB974, § 14; Laws 2016, LB1092, § 10.

**81-3139 Health Care Homes for the Medically Underserved Fund; created; purpose; investment.**

The Health Care Homes for the Medically Underserved Fund is created within the Department of Health and Human 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. The purpose of the fund is to enhance the ability of Nebraska's federally qualified health centers to provide patient-centered medical homes to low-income medically underserved populations.

**Source:** Laws 2015, LB661, § 18.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**81-3140 Health Care Homes for the Medically Underserved Fund; distribution; use.**

(1)(a) The purpose of the Health Care Homes for the Medically Underserved Fund is to enhance the ability of Nebraska's federally qualified health centers to provide patient-centered medical homes to low-income medically underserved populations. Twenty-five percent of the state portion of medicaid fraud settlement funds deposited into the Medicaid Fraud Settlement Fund in the Department of Health and Human Services annually shall be transferred to the Health Care Homes for the Medically Underserved Fund for distribution to federally qualified health centers in Nebraska. Such funds shall be distributed proportionately based on the unduplicated number of patients served in the previous year by such federally qualified health centers as reported through the uniform data system of the Health Resources and Services Administration of the United States Department of Health and Human Services.

(b) Five percent of the state portion of the medicaid fraud settlement funds deposited into the Medicaid Fraud Settlement Fund in the Department of Health and Human Services annually shall be transferred to the Health Care Homes for the Medically Underserved Fund for distribution to federally qualified health centers in Nebraska. Such funds shall be used for persons receiving services under section 330(h) or 330(i) of the federal Public Health Service Act, 42 U.S.C. 254b, as such section existed on January 1, 2016.

(2) Funds distributed pursuant to subsection (1) of this section shall be used for the following purposes:

(a) Hiring, training, certifying, and maintaining staff dedicated to patient-centered chronic disease management, including, but not limited to, case managers, health educators, social workers, outreach and enrollment workers, and community health workers;

(b) Providing services, including, but not limited to, interpreter services, transportation services, and social work assistance;

(c) Capital improvements, including, but not limited to, facility expansion, leasing additional space, and furnishing, equipment, or redesign of facilities to support patient-centered care;

(d) Medication management, including, but not limited to, clinical pharmacy services, pharmacists, clinical pharmacists, technology for monitoring and real-time notification, and care managers;

(e) Information technology, including, but not limited to, telehealth services, analytics tools, patient registries, and updates to electronic health records systems; and

(f) Reimbursement to health care providers, including, but not limited to, physicians, nurse practitioners, dietitians, diabetic educators, behavioral health providers, and oral health providers.

**Source:** Laws 2015, LB661, § 19; Laws 2016, LB957, § 8.

## ARTICLE 34

### ENGINEERS AND ARCHITECTS REGULATION ACT

#### Section

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## Section

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**81-3401 Act, how cited.**

Sections 81-3401 to 81-3455 shall be known and may be cited as the Engineers and Architects Regulation Act.

**Source:** Laws 1997, LB 622, § 1; Laws 2009, LB446, § 1; Laws 2011, LB45, § 2; Laws 2015, LB23, § 1.

**81-3402 Architecture and engineering; regulation.**

In order to safeguard life, health, and property and to promote the public welfare, the professions of architecture and engineering are declared to be subject to regulation in the public interest. The practice of architecture and engineering and use of the titles architect or professional engineer is a privilege granted by the state through the board based on the qualifications of the individual as evidenced by a certificate of licensure which is not transferable.

**Source:** Laws 1997, LB 622, § 2; Laws 2015, LB23, § 2.

**81-3403 Definitions, where found.**

For purposes of the Engineers and Architects Regulation Act, the definitions found in sections 81-3404 to 81-3427 shall be used.

**Source:** Laws 1997, LB 622, § 3; Laws 2011, LB45, § 3; Laws 2015, LB23, § 3.

**81-3404 Architect, defined.**

Architect means a person who is licensed by the board to practice architecture.

**Source:** Laws 1997, LB 622, § 4; Laws 2015, LB23, § 4.

**81-3405.01 Building official, defined.**

Building official means a person appointed by the state or a political subdivision having responsibility for the public safety and welfare and the enforcement of building codes with regard to buildings and other structures within such person's jurisdiction.

**Source:** Laws 2011, LB45, § 4; Laws 2015, LB23, § 6.

**81-3405.02 Building, defined.**

Building means any structure used, or intended to be used, to support, shelter, or enclose any use or occupancy.

**Source:** Laws 2015, LB23, § 5.

**81-3406 Repealed. Laws 2015, LB 23, § 51.****81-3407 Continuing education, defined.**

Continuing education means lifelong learning and training relevant to a licensee's professional practice.

**Source:** Laws 1997, LB 622, § 7; Laws 2015, LB23, § 7.

**81-3408 Coordinating professional, defined.**

Coordinating professional means a licensee who coordinates, as appropriate, the work of all licensees involved in a project.

**Source:** Laws 1997, LB 622, § 8; Laws 2015, LB23, § 8.

**81-3409 Design, defined.**

Design means the preparation of schematics, layouts, plans, drawings, specifications, calculations, and other diagnostic documents which show the features of an architectural or engineering project.

**Source:** Laws 1997, LB 622, § 9; Laws 2015, LB23, § 9.

**81-3410 Repealed. Laws 2015, LB 23, § 51.****81-3411 Direct supervision, defined.**

Direct supervision means having full professional knowledge and control over work that constitutes the practice of architecture or engineering.

**Source:** Laws 1997, LB 622, § 11; Laws 2015, LB23, § 10.

**81-3412 Emeritus, defined.**

Emeritus means an architect or professional engineer who has relinquished his or her license and who is approved by the board to use the honorary title emeritus.

**Source:** Laws 1997, LB 622, § 12; Laws 2015, LB23, § 11.

**81-3413 Repealed. Laws 2015, LB 23, § 51.****81-3414 Engineer-intern, defined.**

Engineer-intern means a person who has been duly enrolled as an engineer-intern by the board.

**Source:** Laws 1997, LB 622, § 14; Laws 2015, LB23, § 12.

**81-3415 Estimator, technician, or other similar titles, defined.**

Estimator, technician, or other similar titles means a person who through training or experience is performing tasks associated with the practice of

architecture or engineering under the supervision of an architect or professional engineer, respectively.

**Source:** Laws 1997, LB 622, § 15; Laws 2015, LB23, § 13.

**81-3416 Good ethical character, defined.**

Good ethical character means such character as will enable a person to discharge the fiduciary duties of an architect or professional engineer to his or her client and to the public for the protection of the public health, safety, and welfare.

**Source:** Laws 1997, LB 622, § 16; Laws 2015, LB23, § 14.

**81-3416.01 Intern architect, defined.**

Intern architect means a person who has enrolled in the Intern Development Program of the National Council of Architectural Registration Boards and holds a degree from a program accredited by the National Architectural Accrediting Board or equivalent.

**Source:** Laws 2015, LB23, § 15.

**81-3416.02 Licensee, defined.**

Licensee means a licensed architect or professional engineer.

**Source:** Laws 2015, LB23, § 16.

**81-3417 Repealed. Laws 2015, LB 23, § 51.**

**81-3418 Organization, defined.**

Organization means a business entity created by law, including, but not limited to, a partnership, limited liability company, corporation, or joint venture.

**Source:** Laws 1997, LB 622, § 18; Laws 2015, LB23, § 17.

**81-3419 Repealed. Laws 2015, LB 23, § 51.**

**81-3420 Practice of architecture, defined.**

(1) Practice of architecture means providing or offering to provide design services in connection with the construction, enlargement, or alteration of a building or group of buildings and the space within and surrounding the buildings. The services may include, but not be limited to, planning, providing studies, designs, drawings, specifications, and other technical submissions, and administering construction contracts. The practice of architecture does not include the practice of engineering.

(2) A person shall be construed to practice architecture, within the meaning and intent of the Engineers and Architects Regulation Act, if he or she:

(a) Practices the profession of architecture or holds himself or herself out as able and entitled to practice architecture;

(b) By verbal claim, sign, advertisement, letterhead, or card or in any other way, represents himself or herself to be an architect; or

(c) Through the use of some other title, implies that he or she is an architect or licensed under the Engineers and Architects Regulation Act.

**Source:** Laws 1997, LB 622, § 20; Laws 2015, LB23, § 18.

**81-3421 Practice of engineering, defined.**

(1) Practice of engineering means any service or creative work that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences. The services may include, but not be limited to, planning, providing studies, designs, drawings, specifications, and other technical submissions, and administering construction contracts. The practice of engineering does not include the practice of architecture.

(2) A person shall be construed to practice engineering, within the meaning and intent of the Engineers and Architects Regulation Act, if he or she:

(a) Practices any discipline of the profession of engineering or holds himself or herself out as able and entitled to practice any discipline of engineering;

(b) By verbal claim, sign, advertisement, letterhead, or card or in any other way, represents himself or herself to be a professional engineer; or

(c) Through the use of some other title, implies that he or she is a professional engineer or licensed under the Engineers and Architects Regulation Act.

**Source:** Laws 1997, LB 622, § 21; Laws 2015, LB23, § 19.

**81-3422 Professional engineer, defined.**

Professional engineer means a person who is licensed by the board to practice engineering. The board may designate a professional engineer, on the basis of education, experience, and examination, as being licensed in a specific discipline of engineering signifying an area in which the professional engineer has demonstrated competence.

**Source:** Laws 1997, LB 622, § 22; Laws 2015, LB23, § 20.

**81-3422.01 Project, defined.**

Project means one or more related activities that require the practice of architecture or engineering for completion.

**Source:** Laws 2011, LB45, § 5; Laws 2015, LB23, § 21.

**81-3423 Public service provider, defined.**

Public service provider means any political subdivision which employs or appoints an architect or a professional engineer to be in responsible charge of the political subdivision's architectural or engineering work.

**Source:** Laws 1997, LB 622, § 23; Laws 2015, LB23, § 22.

**81-3424 Repealed. Laws 2015, LB 23, § 51.**

**81-3425 Responsible charge, defined.**

Responsible charge means the management of the technical and financial aspects of engineering or architectural work through an organization.

**Source:** Laws 1997, LB 622, § 25; Laws 2015, LB23, § 23.

**81-3427 Technical submissions, defined.**

Technical submissions means designs, drawings, specifications, studies, and other technical reports that constitute, or may be prepared in conjunction with, a project.

**Source:** Laws 1997, LB 622, § 27; Laws 2015, LB23, § 24.

**81-3428 Board of Engineers and Architects; created; members; terms; location.**

(1) The Board of Engineers and Architects is created to administer the Engineers and Architects Regulation Act. The board shall consist of eight members appointed by the Governor for terms of five years terminating on the last day of February. The board shall consist of:

(a) Three architect members, two of whom shall be appointed after consulting with the appropriate architectural professional organizations, and one education member who is a faculty member of the University of Nebraska appointed upon the recommendation of the Dean of Architecture of the University of Nebraska;

(b) Four professional engineer members, three of whom shall be appointed after consulting with the appropriate engineering professional organizations, and one education member who is a faculty member of the University of Nebraska appointed upon the recommendation of the Dean of Engineering of the University of Nebraska; and

(c) One public member.

(2) Each member shall hold office after the expiration of his or her term until his or her successor is duly appointed and qualified. Vacancies in the membership of the board, however created, shall be filled for the unexpired term by appointment by the Governor. The Governor shall reappoint or replace existing members as their terms expire, and the public member shall be reappointed or replaced in the fifth year of his or her term. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

(3) Each member of the board shall be a citizen of the United States and a resident of the State of Nebraska for at least one year immediately preceding appointment. Each architect or professional engineer member shall have been engaged in the active practice of the design profession for at least ten years, shall have had direct supervision of work for at least five years at the time of his or her appointment, and shall be licensed in the relevant profession.

(4) The board may designate a former member of the board as an emeritus member, but for no more than ten years after his or her original board membership expires. Emeritus member status, when conferred, must be renewed annually.

(5) The board offices shall be located in Lincoln, Nebraska.

**Source:** Laws 1997, LB 622, § 28; Laws 2015, LB23, § 25.

**81-3429 Board; members; per diem; expenses.**

Each member of the board shall receive as compensation not more than one hundred dollars per day for each day or substantial portion of a day spent traveling to and from and attending sessions of the board and its committees, authorized meetings of the National Council of Architectural Registration

Boards, the National Council of Examiners for Engineering and Surveying, or their subdivisions or committees, or other business as authorized by the board. Each member of the board shall be reimbursed for all necessary and authorized expenses incident to the performance of his or her duties under the Engineers and Architects Regulation Act as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1997, LB 622, § 29; Laws 2011, LB45, § 6; Laws 2015, LB23, § 26.

**81-3430 Certificate of appointment; oath; Attorney General; legal advisor; seal; rules and regulations.**

Each member of the board shall receive a certificate of appointment from the Governor and, before beginning his or her term of office, shall file with the Secretary of State the constitutional oath of office. The board or any committee of the board is entitled to the services of the Attorney General in connection with the affairs of the board, and the board may compel the attendance of witnesses, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction. The Attorney General shall act as legal advisor to the board and render such legal assistance as may be necessary in carrying out the Engineers and Architects Regulation Act. The board shall adopt and have an official seal, which shall be affixed to all certificates of licensure granted, and shall adopt and promulgate rules and regulations to carry out the act.

**Source:** Laws 1997, LB 622, § 30; Laws 2015, LB23, § 27.

**81-3432 Engineers and Architects Regulation Fund; created; use; investment.**

The Engineers and Architects Regulation Fund is created. The secretary of the board shall receive and account for all money derived from the operation of the Engineers and Architects Regulation Act and shall remit the money to the State Treasurer for credit to the Engineers and Architects Regulation Fund. All expenses certified by the board as properly and necessarily incurred in the discharge of duties, including compensation and administrative staff, and any expense incident to the administration of the act relating to other states shall be paid out of the fund. Debt repayments payable pursuant to section 81-3432.01 shall be paid out of the fund. Warrants for the payment of expenses shall be issued by the Director of Administrative Services and paid by the State Treasurer upon presentation of vouchers regularly drawn by the chairperson and secretary of the board and approved by the board. At no time shall the total amount of warrants exceed the total amount of the fees collected under the act and to the credit of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Money in the Engineers and Architects Regulation Fund may be transferred to the General Fund at the direction of the Legislature.

The State Treasurer shall transfer three hundred thousand dollars from the Engineers and Architects Regulation Fund to the General Fund on or before June 15, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1997, LB 622, § 32; Laws 2009, LB446, § 2; Laws 2009, First Spec. Sess., LB3, § 86; Laws 2015, LB23, § 28; Laws 2017, LB331, § 54.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-3432.01 Repayment of qualified educational debt; authorized; eligibility.**

(1) The board may repay qualified educational debt owed by an eligible graduate. Such repayment shall be made from the Engineers and Architects Regulation Fund. To be eligible for debt repayment, a recipient shall be a graduate of (a) a National Architectural Accrediting Board-accredited architecture program in Nebraska or (b) an ABET-accredited engineering program in Nebraska and shall have obtained qualified educational debt.

(2) For purposes of this section, qualified educational debt means government and commercial loans obtained by a student for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the board.

(3) The board may adopt and promulgate rules and regulations governing any debt repayment under this section.

**Source:** Laws 2009, LB446, § 3; Laws 2015, LB23, § 29.

**81-3433 Roster.**

The board shall maintain and make available to the public a complete roster of all architects and professional engineers showing their names and last-known addresses. The board shall file the roster with the Secretary of State and may distribute a copy to each licensed person as well as county and municipal officials. The board may charge a fee for distributing the roster.

**Source:** Laws 1997, LB 622, § 33; Laws 2015, LB23, § 30.

**81-3434 Code of practice; contents.**

(1) The Legislature hereby finds and declares that a code of practice established by the board by which architects and professional engineers could govern their professional conduct would be beneficial to the state and would safeguard the life, health, and property and promote the public welfare of the citizens of this state.

(2) The code of practice established by this section shall include provisions on:

- (a) Professional competence;
- (b) Conflict of interest;
- (c) Full disclosure of financial interest;
- (d) Full disclosure of matters affecting public safety, health, and welfare;
- (e) Compliance with laws;
- (f) Professional conduct and good ethical character standards; and
- (g) Practice of architecture and engineering.

(3) The board may adopt and promulgate rules and regulations to implement the code of practice.

(4) The board may publish commentaries regarding the code of practice. The commentaries shall explain the meaning of interpretations given to the code by the board.

**Source:** Laws 1997, LB 622, § 34; Laws 2015, LB23, § 31.

**81-3435 Application for licensure, examination, intern enrollment, certificate of authorization, or emeritus status; form; fees.**

(1) Applications for licensure, examination, intern enrollment, a certificate of authorization, or emeritus status shall be made on a form prescribed and furnished by the board. Applications shall be made under oath.

(2) The board may accept the verified information contained in a valid Council Record issued by the National Council of Architectural Registration Boards or the National Council of Examiners for Engineering and Surveying in lieu of the same information that is required on the form prescribed and furnished by the board.

(3)(a) The board shall establish application and licensure fees as provided in this subsection. All fees are nonrefundable.

(b) The fee for license applications may not exceed three hundred dollars.

(c) The fee for examination applications may be set to recover the costs of examination and its administration.

(d) The fee for intern enrollment may not exceed one hundred dollars.

(e) The certificate of authorization fee for organizations may not exceed three hundred dollars per year.

(f) The fee for emeritus status may not exceed one hundred dollars per year.

**Source:** Laws 1997, LB 622, § 35; Laws 2015, LB23, § 32.

**81-3436 Organizational practice; certificate of authorization; when required; application; immunity; Secretary of State; registration of trade name or service mark; limitation.**

(1) An individual licensed under the Engineers and Architects Regulation Act may practice or offer to practice the profession of architecture or engineering through an organization if the criteria for organizational practice established by the board are met and the organization has been issued a certificate of authorization by the board.

(2) An organization applying for a certificate of authorization shall designate at least one licensed architect as the person in responsible charge of any practice of architecture by the organization and at least one professional engineer as the person in responsible charge of any practice of engineering by the organization. One who renders only occasional professional services for an organization may not be designated as being in responsible charge of the professional activities of an organization under this section.

(3) To obtain a certificate of authorization, a board-approved application shall be filed with the board. The application shall contain the names and license numbers of the individual or individuals designated as in responsible charge and licensed to practice architecture or engineering in Nebraska. Certificates of authorization shall be for a defined period and may be renewed.

(4) An organization shall notify the board of any changes in the status of any individual designated as in responsible charge within thirty days after the effective date of the change.

(5) All technical submissions issued or filed for public record through an organization involving the practice of architecture or engineering shall be sealed in accordance with the act by the licensee who prepared the submissions or under whose direct supervision they were prepared.



(6) An organization is not relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section. An individual practicing architecture or engineering is not relieved of responsibility for services performed by reason of employment or any other relationship with an organization holding a certificate of authorization.

(7) The Secretary of State shall not issue a certificate of authority to do business in the state to an applicant or issue a registration of name in the state to an organization which intends to engage in the practice of architecture or engineering unless the board has issued the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive a certificate or to register the name.

(8) Except as otherwise authorized in the Engineers and Architects Regulation Act or in the Professional Landscape Architects Act, the Secretary of State shall not register any trade name or service mark which includes the words architect or engineer, or any modification or derivative of such words, in an applicant's firm name or logotype unless the board has issued the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to register the trade name or service mark.

(9) A public service provider or an organization may engage in the practice of architecture or engineering for itself without obtaining a certificate of authorization.

**Source:** Laws 1997, LB 622, § 36; Laws 2013, LB7, § 1; Laws 2015, LB23, § 33.

#### Cross References

Professional Landscape Architects Act, see section 81-8,183.01.

### **81-3436.01 Combined services with construction services; authorized; conditions.**

(1) Providing combined services involving the practice of architecture or engineering, or both, with construction services is allowed if:

(a) An architect participates substantially in, and has direct supervision of, the architectural services provided on the project;

(b) A professional engineer participates substantially in, and has direct supervision of, the engineering services provided on the project; and

(c) The rendering of architectural or professional engineering services conforms to the Engineers and Architects Regulation Act and the rules and regulations.

(2) A temporary permit holder under the act may perform engineering or architectural services pursuant to this section.

**Source:** Laws 2015, LB23, § 34.

### **81-3437 Certificate of licensure; issuance; certificate of enrollment; issuance.**

(1) The board shall issue to any applicant who, on the basis of education, experience, and examination, has met the requirements of the Engineers and Architects Regulation Act a certificate of licensure giving the licensee proper authority to carry out the prerogatives of the act. If a professional engineer's license has been issued in a specific discipline, the discipline shall be specified on the certificate of licensure. The certificate of licensure shall carry the

designation Licensed Architect or Licensed Professional (discipline) Engineer. The certificate shall give the full name of the licensee and license number and shall be signed by the chairperson of the board, the secretary of the board, and one other board member.

(2) The certificate of licensure shall be prima facie evidence that the person is entitled to all rights, privileges, and responsibilities of an architect or a professional engineer while the certificate of licensure remains unrevoked and unexpired.

(3) The board shall issue to any applicant who, on the basis of education and examination, has met the requirements of the Engineers and Architects Regulation Act a certificate of enrollment as an engineer-intern. The engineer-intern certificate does not authorize the holder to practice as a professional engineer.

**Source:** Laws 1997, LB 622, § 37; Laws 2013, LB7, § 2; Laws 2015, LB23, § 35.

#### **81-3437.01 Seal; contents; use; prohibited acts.**

(1) Each licensee authorized to practice architecture or engineering must obtain a seal. The design of the seal shall be determined by the board. If a professional engineer's license has been issued in a specific discipline, the discipline shall be specified on the seal. The following information shall be on the seal: State of Nebraska; licensee's name; licensee's license number; and the words Architect or Professional (discipline) Engineer.

(2) Whenever the seal is applied, the licensee's signature shall be across the seal. The board may adopt and promulgate rules and regulations for application of the seal.

(3) The seal and the date of its placement shall be on all technical submissions and calculations whenever presented to a client or any public or governmental agency. It shall be unlawful for a licensee to affix his or her seal or to permit his or her seal to be affixed to any document after the expiration of the certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade the Engineers and Architects Regulation Act.

(4) The seal and date shall be placed on all originals, copies, tracings, or other reproducible drawings and the first and last pages of specifications, reports, and studies in such a manner that the seal, signature, and date will be reproduced and be in compliance with rules and regulations of the board. The application of the licensee's seal shall constitute certification that the work was done by the licensee or under the licensee's control.

(5) In the case of a temporary permit issued to a licensee of another state, the licensee shall use his or her state of licensure seal and shall affix his or her signature and temporary permit to all his or her work.

**Source:** Laws 2015, LB23, § 36.

#### **81-3437.02 Coordinating professional; designation; duties.**

(1) Projects involving more than one licensed architect or professional engineer shall have an architect or professional engineer designated as the coordinating professional for the entire project. The coordinating professional may, but need not, provide architectural or engineering services on the project. The coordinating professional shall apply his or her seal in accordance with the

Engineers and Architects Regulation Act to the cover sheet of all documents and denote the seal as that of the coordinating professional.

(2) The coordinating professional shall be responsible for reviewing and coordinating technical documents prepared by others for compatibility with the design of the project.

**Source:** Laws 2015, LB23, § 37.

**81-3438 Certificates; expiration; renewal; fees; continuing education.**

Certificates of licensure and certificates of authorization shall expire on a date established by the board and shall become invalid after that date unless renewed. The board shall notify every person licensed under the Engineers and Architects Regulation Act and every organization holding a certificate of authorization under the act of the date of the expiration of the certificate of licensure or certificate of authorization and the amount of the fee required for renewal. The notice shall be mailed at least one month in advance of the date of the expiration to the licensee or organization at the last-known address on file with the board. Valid certificates may be renewed prior to expiration upon application and payment of applicable fees. Expired certificates may be renewed in accordance with rules and regulations of the board. Renewal fees shall not exceed two hundred dollars per year. The board may require licensees to obtain continuing education as a condition of license renewal.

**Source:** Laws 1997, LB 622, § 38; Laws 2015, LB23, § 38.

**81-3441 Use of title; unlawful practice.**

Except as provided in sections 81-3414, 81-3415, 81-3449, and 81-3453, an individual shall not directly or indirectly engage in the practice of architecture or engineering in the state or use the title architect or professional engineer or display or use any words, letters, figures, titles, sign, card, advertisement, or other symbol or device indicating or tending to indicate that he or she is an architect or professional engineer or is practicing architecture or engineering unless he or she is licensed under the Engineers and Architects Regulation Act. A licensee shall not aid or abet any person not licensed under the act in the practice of architecture or engineering.

**Source:** Laws 1997, LB 622, § 41; Laws 2011, LB45, § 7; Laws 2015, LB23, § 39.

**81-3442 Prohibited acts; penalties.**

(1) It is unlawful for any person to:

(a) Practice or offer to practice architecture or engineering in this state without being licensed in accordance with the Engineers and Architects Regulation Act unless such practice or offer to practice is otherwise exempt under the act;

(b) Knowingly and intentionally employ or retain a person to practice architecture or engineering in this state who is not licensed in accordance with the act, except as provided in sections 81-3414 and 81-3415, and who is not exempted by section 81-3449 or 81-3453;

(c) Use the words architect, engineer, or any modification or derivative of such words in its name or form of business activity except as authorized in the act or in the Professional Landscape Architects Act;

(d) Advertise any title or description tending to convey the impression that he or she is a licensed architect or professional engineer unless the person is duly licensed under the Engineers and Architects Regulation Act;

(e) Present or attempt to use the certificate of licensure or the seal of another person;

(f) Give any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate;

(g) Falsely impersonate any other licensee of like or different name;

(h) Attempt to use an expired, suspended, revoked, or nonexistent certificate of licensure or practice or offer to practice when not qualified;

(i) Falsely claim that he or she is licensed or authorized under the act; or

(j) Violate the act.

(2) Any person who performs any of the actions described in subsection (1) of this section is guilty of a Class I misdemeanor for the first offense and a Class IV felony for the second or any subsequent offense.

**Source:** Laws 1997, LB 622, § 42; Laws 2011, LB45, § 8; Laws 2015, LB23, § 40.

#### Cross References

**Professional Landscape Architects Act**, see section 81-8,183.01.

### **81-3443 Enforcement procedures.**

(1) A complaint against any person or organization involving any matter coming within the jurisdiction of the board shall be in writing and shall be filed with the board.

(2) A hearing on the complaint shall be held within a reasonable time in accordance with the rules and regulations and may be heard through the use of a hearing officer. The accused shall have the right to appear personally with or without counsel, to cross-examine adverse witnesses, and to produce evidence and witnesses in his, her, or its defense.

(3) The board shall set the time and place for the hearing and shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused, at his, her, or its last-known business or residence address known to the board, at least thirty days before the hearing.

(4) If after the hearing the board finds the accused has violated the Engineers and Architects Regulation Act or any rules or regulations, it may issue any order or take any action described in section 81-3444. If the order revokes, suspends, or cancels a license, the board shall notify, in writing, the Secretary of State. If the board finds no violation, it shall enter an order dismissing the complaint.

(5) The board may reissue a license that has been revoked. Application for the reissuance of a license shall be made in such a manner as the board directs and shall be accompanied by a fee established by the board.

**Source:** Laws 1997, LB 622, § 43; Laws 2011, LB45, § 9; Laws 2015, LB23, § 41.

### **81-3444 Disciplinary actions authorized; civil penalties.**

(1) The board, after hearing and upon proof satisfactory to the board, may determine by two-thirds majority vote that any person or organization has violated the Engineers and Architects Regulation Act or any rules or regulations.

(2) Upon a finding that a person or organization has committed a violation, one or more of the following actions may be taken against such person or organization upon a two-thirds majority vote of the board:

- (a) Issuance of censure or reprimand;
- (b) Suspension of judgment;
- (c) Placement of the offender on probation;

(d) Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;

(e) Imposition of a civil penalty not to exceed ten thousand dollars for each offense. The amount of the penalty shall be based on the severity of the violation;

(f) Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure;

(g) Issuance of a cease and desist order;

(h) Imposition of costs as in an ordinary civil action in the district court, which may include reasonable attorney's fees and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or

(i) Dismissal of the action.

(3) The board may take into account suitable evidence of reform when determining appropriate action.

(4) Civil penalties collected under subdivision (2)(e) of this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected under subdivision (2)(h) of this section shall be remitted to the State Treasurer for credit to the Engineers and Architects Regulation Fund.

**Source:** Laws 1997, LB 622, § 44; Laws 2011, LB45, § 10; Laws 2015, LB23, § 42.

**81-3446 Construction projects on private lands; applicability of act; owner; duties.**

(1) A project on private land is subject to the provisions of the Engineers and Architects Regulation Act unless exempt under section 81-3449 or 81-3453.

(2) The owner of any real property who allows a project to be constructed on his or her real property is engaged in the practice of architecture or engineering unless he or she employs or causes others to employ licensed architects or professional engineers or persons under the direct supervision of licensed architects or professional engineers to furnish at least minimum construction phase services with respect to the project or is exempt from the Engineers and Architects Regulation Act under sections 81-3449 and 81-3453.

(3) For purposes of this section:

(a) Construction phase service includes at least the following services: (i) Visiting the project site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the project permit was issued; and (ii) processing technical submissions required of the contractor by the terms of contract documents. The term does not include supervision of construction, review of payment applications, resolution of disputes between the owner and contractor, and other such items which are considered additional construction administration services which the owner may or may not elect to include in the architect's or engineer's scope of work; and

(b) Owner means with respect to any real property the following persons: (i) The record owner of such real property; (ii) the lessee of all or any portion of the real property when the lease covers all of that portion of the real property upon which the project is being constructed, the lessee has significant approval rights with respect to the project, and the lease, at the time the project begins, has a remaining term of not less than ten years; or (iii) the grantee of an easement granting right-of-way to construct the project.

**Source:** Laws 1997, LB 622, § 46; Laws 2011, LB45, § 12; Laws 2015, LB23, § 43.

**81-3448 Architect; license; application; fee; requirements; examination; temporary permit.**

(1) The following shall be considered as the minimum evidence satisfactory to the board that an applicant is eligible for admission to an examination on technical and professional subjects of architecture as prescribed by the board:

(a) Graduation from a program accredited by the National Architectural Accrediting Board, or satisfying the requirements of the Education Standard of the National Council of Architectural Registration Boards as determined by the council;

(b) Establishment of a record maintained by the National Council of Architectural Registration Boards for the purpose of documenting architectural work experience for the council's Intern Development Program; and

(c) Submittal of an application accompanied by the fee established by the board.

(2) The following shall be considered as the minimum evidence satisfactory to the board that an applicant is eligible for initial licensure as an architect:

(a) Passage of an examination on technical and professional subjects as prescribed by the board as set forth in subsection (1) of this section;

(b) Completion of the Intern Development Program of the National Council of Architectural Registration Boards, or its equivalent as determined by the council;

(c) Passage of an examination on the statutes, rules, and other requirements unique to this state; and

(d) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure.

(3) An individual holding a license to practice architecture issued by a proper authority of any jurisdiction, based on credentials that do not conflict with

subsection (2) of this section and other provisions of the Engineers and Architects Regulation Act, may, upon application, be licensed as an architect after:

(a) Successful passage of an examination on the statutes, rules, and other requirements unique to this state; and

(b) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure.

(4) An individual who holds a current and valid certification issued by the National Council of Architectural Registration Boards and who submits satisfactory evidence of such certification to the board may, upon application, be licensed as an architect after:

(a) Successful passage of an examination on the statutes, rules, and other requirements unique to this state; and

(b) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure.

(5) An individual who has been licensed to practice architecture for fifteen years or more in one or more jurisdictions and who has practiced architecture for fifteen years in compliance with the licensing laws in the jurisdictions where his or her architectural practice has occurred since initial licensure may, upon application, be licensed as an architect after:

(a) Successful passage of an examination on the statutes, rules, and other requirements unique to this state; and

(b) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure.

(6) An individual who holds a valid license to practice architecture in another jurisdiction may be issued a temporary permit to provide architectural services for a specific project. An individual may not be issued more than one temporary permit. Temporary permit holders are subject to all of the provisions of the Engineers and Architects Regulation Act governing the practice of architecture.

(7) None of the examination materials described in this section shall be considered public records.

(8) The board or its agent shall direct the time and place of the architectural examinations referenced in subsections (1) and (2) of this section.

(9) The board may adopt the examinations and grading procedures of the National Council of Architectural Registration Boards. The board may also adopt guidelines published by the council.

(10) Licensure shall be effective upon issuance.

**Source:** Laws 1997, LB 622, § 48; Laws 2011, LB45, § 13; Laws 2015, LB23, § 44.

**81-3449 Practice of architecture; exempted activities.**

The provisions of the Engineers and Architects Regulation Act regulating the practice of architecture do not apply to the following activities:

(1) The construction, remodeling, alteration, or renovation of a detached single-family through four-family dwelling of less than five thousand square feet of above grade finished space. Any detached or attached sheds, storage buildings, and garages incidental to the dwelling are not included in the tabulation of finished space. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(2) The construction, remodeling, alteration, or renovation of a one-story commercial or industrial building or structure of less than five thousand square feet of above grade finished space which does not exceed thirty feet in height unless such building or structure, or the remodeling or repairing thereof, provides for the employment, housing, or assembly of twenty or more persons. Any detached or attached sheds, storage buildings, and garages incidental to the building or structure are not included in the tabulation of finished space. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(3) The construction, remodeling, alteration, or renovation of farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry, or storage, if the structures are designed to be occupied by no more than twenty persons. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(4) Any public works project with contemplated expenditures for a completed project that do not exceed one hundred thousand dollars. The board shall adjust the dollar amount in this subdivision every fifth year. The first such adjustment after August 27, 2011, shall be effective on July 1, 2014. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount;

(5) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(6) The teaching, including research and service, of architectural subjects in a college or university offering a degree in architecture accredited by the National Architectural Accrediting Board;

(7) The preparation of submissions to architects, building officials, or other regulating authorities by the manufacturer, supplier, or installer of any materials, assemblies, components, or equipment that describe or illustrate the use of such items, the preparation of any details or shop drawings required of the contractor by the terms of the construction documents, or the management of construction contracts by persons customarily engaged in contracting work;

(8) The preparation of technical submissions or the administration of construction contracts by employees of a person or organization lawfully engaged



in the practice of architecture if such employees are acting under the direct supervision of an architect;

(9) A public service provider or an organization who employs a licensee performing professional services for itself;

(10) A nonresident who holds the certification issued by the National Council of Architectural Registration Boards offering to render the professional services involved in the practice of architecture. The nonresident shall not perform any of the professional services involved in the practice of architecture until licensed as provided in the Engineers and Architects Regulation Act. The nonresident shall notify the board in writing that (a) he or she holds a National Council of Architectural Registration Boards certificate and is not currently licensed in Nebraska but will be present in Nebraska for the purpose of offering to render architectural services, (b) he or she will deliver a copy of the notice to every potential client to whom the applicant offers to render architectural services, and (c) he or she promises to apply immediately to the board for licensure if selected as the architect for the project;

(11) The practice by a qualified member of another legally recognized profession who is otherwise licensed or certified by this state or any political subdivision to perform services consistent with the laws of this state, the training, and the code of ethics of the respective profession, if such qualified member does not represent himself or herself to be practicing architecture and does not represent himself or herself to be an architect;

(12) Financial institutions making disbursements of funds in connection with construction projects;

(13) Earthmoving and related work associated with soil and water conservation practices performed on farmland or any land owned by a political subdivision that is not subject to a permit from the Department of Natural Resources or for work related to livestock waste facilities that are not subject to a permit by the Department of Environmental Quality; and

(14) The work of employees and agents of a political subdivision or a nonprofit entity organized for the purpose of furnishing electrical service performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance.

**Source:** Laws 1997, LB 622, § 49; Laws 1999, LB 253, § 3; Laws 1999, LB 440, § 1; Laws 2000, LB 900, § 251; Laws 2004, LB 599, § 3; Laws 2011, LB45, § 14; Laws 2015, LB23, § 45.

#### Cross References

Negotiated Rulemaking Act, see section 84-921.

### **81-3450 Technical submissions by architect; affix seal and signature; conditions.**

(1) An architect shall not affix his or her seal and signature to technical submissions that are subject to the Engineers and Architects Regulation Act unless the technical submissions were:

(a) Prepared entirely by the architect;

(b) Prepared entirely under the direct supervision of the architect; or

(c) Prepared partially by others if the architect has reviewed and integrated the work into his or her own technical submissions.

(2) An architect may affix his or her seal to technical submissions not subject to the act if the architect has reviewed or adapted in whole or in part such submissions and integrated them into his or her work.

**Source:** Laws 1997, LB 622, § 50; Laws 2013, LB7, § 3; Laws 2015, LB23, § 46.

**81-3451 Engineer-intern; enrollment; requirements; application; fee; professional engineer; license; application; fee; examination; requirements.**

(1) The following shall be considered as the minimum evidence satisfactory to the board that an applicant is eligible for enrollment as an engineer-intern:

(a) Graduation from a program accredited by the Engineering Accreditation Commission of ABET, or meeting the Education Standard of the National Council of Examiners for Engineering and Surveying as determined by the council;

(b) Passage of an examination in the fundamentals of engineering as accepted by the board;

(c) Submittal of an application accompanied by the fee established by the board; and

(d) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for enrollment.

(2)(a) The following shall be considered as the minimum evidence satisfactory to the board that an applicant is eligible for admission to the examination on the principles and practice of engineering that is adopted by the board:

(i) Graduation from a program accredited by the Engineering Accreditation Commission of ABET, or meeting the Education Standard of the National Council of Examiners for Engineering and Surveying as determined by the council;

(ii) A record of four years or more of progressive post-accredited-degree experience on engineering projects of a grade and character which indicates to the board that the applicant may be competent to practice engineering;

(iii) Passage of an examination in the fundamentals of engineering as accepted by the board;

(iv) Submittal of an application accompanied by the fee established by the board; and

(v) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application.

(b) A candidate who fails the principles and practice of engineering examination may apply for reexamination, which may be granted upon payment of a fee established by the board. In the event of a second or subsequent failure, the examinee may, at the discretion of the board, be required to appear before the board with evidence of having acquired the necessary additional knowledge to qualify before admission to the examination.

(3) The following shall be considered as the minimum evidence satisfactory to the board that an applicant is eligible for licensure as a professional engineer:

(a) Passage of the principles and practice of engineering examination as set forth in subsection (2) of this section;

(b) A record of four years or more of progressive post-accredited-degree experience on engineering projects of a grade and character which indicates to the board that the applicant may be competent to practice engineering;

(c) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure; and

(d) Successful passage of an examination on the statutes, rules, and other requirements unique to this state.

(4) An individual holding a license to practice engineering issued by a proper authority of any jurisdiction, based on credentials that do not conflict with subsections (2) and (3) of this section and other provisions of the Engineers and Architects Regulation Act, may, upon application, be licensed as a professional engineer after:

(a) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure; and

(b) Successful passage of an examination on the statutes, rules, and other requirements unique to this state.

(5) An individual who has been licensed to practice engineering for fifteen years or more in one or more jurisdictions and who has practiced engineering for fifteen years in compliance with the licensing laws in the jurisdictions where his or her engineering practice has occurred since initial licensure may, upon application, be licensed as a professional engineer after:

(a) Demonstration of good reputation and good ethical character by attestation of references. The names and complete addresses of references acceptable to the board shall be included in the application for licensure; and

(b) Successful passage of an examination on the statutes, rules, and other requirements unique to this state.

(6) The board may designate a professional engineer as being licensed in a specific discipline or branch of engineering signifying the area in which the professional engineer has demonstrated competence.

(7) An individual who holds a valid license to practice engineering in another jurisdiction may be issued a temporary permit to provide engineering services for a specific project. An individual may not be issued more than one temporary permit. Temporary permit holders are subject to all of the provisions of the Engineers and Architects Regulation Act governing the practice of engineering.

(8) None of the examination materials described in this section shall be considered public records.

(9) The board or its agent shall direct the time and place of the engineering examinations referenced in subsections (1), (2), and (3) of this section.

(10) The board may adopt the examinations and grading procedures of the National Council of Examiners for Engineering and Surveying. The board may also adopt guidelines published by the council.

(11) Licensure shall be effective upon issuance.

**Source:** Laws 1997, LB 622, § 51; Laws 2004, LB 599, § 4; Laws 2004, LB 1069, § 1; Laws 2011, LB45, § 15; Laws 2015, LB23, § 47.

**81-3452 Repealed. Laws 2015, LB 23, § 51.****81-3453 Practice of engineering; exempted activities.**

The provisions of the Engineers and Architects Regulation Act regulating the practice of engineering do not apply to the following activities:

(1) The construction, remodeling, alteration, or renovation of a detached single-family through four-family dwelling of less than five thousand square feet above grade finished space. Any detached or attached sheds, storage buildings, and garages incidental to the dwelling are not included in the tabulation of finished space. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(2) The construction, remodeling, alteration, or renovation of a one-story commercial or industrial building or structure of less than five thousand square feet above grade finished space which does not exceed thirty feet in height unless such building or structure, or the remodeling or repairing thereof, provides for the employment, housing, or assembly of twenty or more persons. Any detached or attached sheds, storage buildings, and garages incidental to the building or structure are not included in the tabulation of finished space. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(3) The construction, remodeling, alteration, or renovation of farm buildings, including barns, silos, sheds, or housing for farm equipment and machinery, livestock, poultry, or storage and if the structures are designed to be occupied by no more than twenty persons. Such exemption may be increased by rule and regulation of the board adopted pursuant to the Negotiated Rulemaking Act but shall not exceed the Type V, column B, limitations set forth by the allowable height and building areas table in the state building code adopted in section 71-6403;

(4) Any public works project with contemplated expenditures for the completed project that do not exceed one hundred thousand dollars. The board shall adjust the dollar amount in this subdivision every fifth year. The first such adjustment after August 27, 2011, shall be effective on July 1, 2014. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount;

(5) Any alteration, renovation, or remodeling of a building if the alteration, renovation, or remodeling does not affect architectural or engineering safety features of the building;

(6) The teaching, including research and service, of engineering subjects in a college or university offering an ABET-accredited engineering curriculum of four years or more;

(7) A public service provider or an organization who employs a licensee performing professional services for itself;

(8) The practice by a qualified member of another legally recognized profession who is otherwise licensed or certified by this state or any political subdivision to perform services consistent with the laws of this state, the training, and the code of ethics of such profession, if such qualified member does not represent himself or herself to be practicing engineering and does not represent himself or herself to be a professional engineer;

(9) The offer to practice engineering by a person not a resident of and having no established place of business in this state if the person is legally qualified by licensure to practice engineering in his or her own state or country. The person shall make application to the board in writing and after payment of a fee established by the board may be granted a temporary permit for a definite period of time not to exceed one year to do a specific job. No right to practice engineering accrues to such applicant with respect to any other work not set forth in the permit;

(10) The work of an employee or a subordinate of a person holding a certificate of licensure under the Engineers and Architects Regulation Act or an employee of a person practicing lawfully under subdivision (9) of this section if the work is done under the direct supervision of a person holding a certificate of licensure or a person practicing lawfully under such subdivision;

(11) Those services ordinarily performed by subordinates under direct supervision of a professional engineer or those commonly designated as locomotive, stationary, marine operating engineers, power plant operating engineers, or manufacturers who supervise the operation of or operate machinery or equipment or who supervise construction within their own plant;

(12) Financial institutions making disbursements of funds in connection with construction projects;

(13) Earthmoving and related work associated with soil and water conservation practices performed on farmland or any land owned by a political subdivision that is not subject to a permit from the Department of Natural Resources or for work related to livestock waste facilities that are not subject to a permit by the Department of Environmental Quality;

(14) The work of employees and agents of a political subdivision or a nonprofit entity organized for the purpose of furnishing electrical service performing, in accordance with other requirements of law, their customary duties in the administration and enforcement of codes, permit programs, and land-use regulations and their customary duties in utility and public works construction, operation, and maintenance;

(15) Work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, which does not have a substantial impact upon public health, safety, and welfare, as determined by the board, or require the submission of reports or documents to public agencies;

(16) The construction of water wells as defined in section 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells, unless such construction, installation, or decommissioning is required by the owner thereof to be designed or supervised by an engineer or unless legal requirements are imposed upon the owner of a water well as a part of a public water supply;

(17) Work performed in the exploration, development, and production of oil and gas or before the Nebraska Oil and Gas Conservation Commission; and

(18) Siting, layout, construction, and reconstruction of a private onsite wastewater treatment system with a maximum flow from the facility of one thousand gallons of domestic wastewater per day if such system meets all of the conditions required pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act unless the siting, layout, construction, or reconstruction by an engineer is required by the Department of Environmental Quality, mandated by law or rules and regulations imposed upon the owner of the system, or required by the owner.

**Source:** Laws 1997, LB 622, § 53; Laws 1999, LB 253, § 4; Laws 1999, LB 440, § 2; Laws 2000, LB 900, § 252; Laws 2003, LB 94, § 19; Laws 2004, LB 599, § 5; Laws 2011, LB45, § 17; Laws 2015, LB23, § 48.

**Cross References**

Negotiated Rulemaking Act, see section 84-921.

Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, see section 81-15,236.

**81-3454 Technical submissions by professional engineer; affix seal and signature; conditions.**

(1) A professional engineer shall not affix his or her seal and signature to technical submissions that are subject to the Engineers and Architects Regulation Act unless the technical submissions were:

- (a) Prepared entirely by the professional engineer;
- (b) Prepared entirely under the direct supervision of the professional engineer; or
- (c) Prepared partially by others if the professional engineer has reviewed and integrated the work into his or her own technical submissions.

(2) A professional engineer may affix his or her seal to technical submissions not subject to the act if the professional engineer has reviewed or adapted in whole or in part such submissions and integrated them into his or her work.

**Source:** Laws 1997, LB 622, § 54; Laws 2013, LB7, § 4; Laws 2015, LB23, § 49.

**ARTICLE 37**

**NEBRASKA VISITORS DEVELOPMENT ACT**

Section

- 81-3701. Act, how cited.
- 81-3702. Act; purposes.
- 81-3703. Definitions, where found.
- 81-3706.01. Highway tourism marker, defined.
- 81-3709.01. Tourism industry, defined.
- 81-3710. Nebraska Tourism Commission; created; members; terms.
- 81-3711. Commission; duties.
- 81-3711.01. Significant tourism attractions; commission; powers and duties; appoint special committee; Department of Transportation; duties.
- 81-3712. Travel and Tourism Division of Department of Economic Development; transition of employees.
- 81-3713. Commission; statewide strategic plan; duties.
- 81-3714. State Visitors Promotion Cash Fund; created; uses; transfers; investment.
- 81-3721. Commission; contracts authorized.

Section	
81-3724.	Tax Commissioner; adopt rules and regulations.
81-3725.	Marketing assistance grants; applicant; duties; innovative tourism grants; technical review committee; duties; final report.
81-3726.	Tourism Conference Cash Fund; created; use; investment.
81-3727.	Repealed. Laws 2017, LB222, § 14.
81-3728.	Vendors; duties.
81-3729.	Nebraska Tourism Commission Promotional Cash Fund; created; use; investment.

### **81-3701 Act, how cited.**

Sections 81-3701 to 81-3729 shall be known and may be cited as the Nebraska Visitors Development Act.

**Source:** Laws 1980, LB 499, § 19; Laws 1988, LB 797, § 10; R.S.1943, (2008), § 81-1263; Laws 2012, LB1053, § 1; Laws 2015, LB449, § 10; Laws 2017, LB222, § 1; Laws 2018, LB945, § 23.  
Effective date April 5, 2018.

### **81-3702 Act; purposes.**

The purposes of the Nebraska Visitors Development Act are (1) to create the Nebraska Tourism Commission to promote Nebraska as a tourism destination and to administer programs to attract an increasing number of visitors to Nebraska and further the use of travel and tourism facilities in Nebraska, (2) to provide for a lodging tax on hotels for the purpose of establishing a State Visitors Promotion Cash Fund, and (3) to authorize the governing body of any county to appoint a visitors committee and impose a lodging tax on hotels for the purpose of establishing a County Visitors Promotion Fund and a County Visitors Improvement Fund.

**Source:** Laws 1980, LB 499, § 1; Laws 1988, LB 797, § 1; Laws 1989, LB 262, § 1; Laws 2003, LB 726, § 1; R.S.1943, (2008), § 81-1245; Laws 2012, LB1053, § 2; Laws 2017, LB222, § 2.

### **81-3703 Definitions, where found.**

For purposes of the Nebraska Visitors Development Act, unless the context otherwise requires, the definitions found in sections 81-3704 to 81-3709.01 apply.

**Source:** Laws 1980, LB 499, § 2; Laws 1988, LB 797, § 2; R.S.1943, (2008), § 81-1246; Laws 2012, LB1053, § 3; Laws 2015, LB449, § 11; Laws 2017, LB222, § 3.

### **81-3706.01 Highway tourism marker, defined.**

Highway tourism marker means a marker of a particular style authorized by the commission to designate tourism attractions.

**Source:** Laws 2015, LB449, § 12.

### **81-3709.01 Tourism industry, defined.**

Tourism industry includes any person or other entity, whether for-profit or not-for-profit, that promotes an activity, an event, or a site which attracts both in-state and out-of-state visitors, including, but not limited to, a chamber of commerce, a convention and visitors bureau, the hospitality industry, the food

and beverage industry, the hotel industry, a passenger transportation provider, any business or organization engaged in recreational, historical, cultural, artistic, or entertainment pursuits, and any person who owns or operates any such activity, event, or site.

**Source:** Laws 2017, LB222, § 4.

**81-3710 Nebraska Tourism Commission; created; members; terms.**

(1) The Nebraska Tourism Commission is created. The terms of the members serving pursuant to subsection (2) of this section terminate thirty days after August 24, 2017. The terms of the members serving pursuant to subsection (3) of this section begin thirty days after August 24, 2017.

(2) Until thirty days after August 24, 2017, the commission shall consist of the following members:

- (a) One representative from the Game and Parks Commission;
- (b) One representative from the Nebraska Travel Association;
- (c) One representative from the Nebraska Hotel and Motel Association;
- (d) One representative from a tourism attraction that records at least two thousand out-of-state visitors per year;
- (e) One representative from the Nebraska Association of Convention and Visitors Bureaus;
- (f) One representative from the Western Nebraska Tourism Coalition;
- (g) One representative who resides in eastern Nebraska and is employed by a business that derives a majority of its revenue from out-of-state visitors;
- (h) One representative from the Central Nebraska Tourism Partnership; and
- (i) One representative of a business that derives a majority of its revenue from out-of-state visitors.

(3)(a) The Governor shall, within thirty days after August 24, 2017, appoint the members of the commission to begin serving at such time, prior to approval by the Legislature. The members shall consist of eleven residents of the State of Nebraska. Four of the members shall have professional, volunteer, or public service experience that contributes to the fiduciary and governance duties of the commission. Seven of the members shall be affiliated with the tourism industry. One member shall be appointed from each of the eleven districts designated in subdivision (b) of this subsection.

(b) For purposes of this section, the state is hereby divided into eleven districts. The limits and designations of the eleven districts shall be as follows:

- (i) District No. 1. Douglas County;
- (ii) District No. 2. Lancaster County;
- (iii) District No. 3. The counties of Richardson, Pawnee, Nemaha, Johnson, Otoe, Gage, Saline, and Jefferson;
- (iv) District No. 4. The counties of Cass and Sarpy;
- (v) District No. 5. The counties of Saunders, Washington, Dodge, Colfax, Stanton, Cuming, Burt, Thurston, Wayne, Cedar, Dixon, and Dakota;
- (vi) District No. 6. The counties of Butler, Polk, Platte, Merrick, Nance, Boone, Madison, Pierce, Antelope, Knox, Holt, and Boyd;



(vii) District No. 7. The counties of Thayer, Nuckolls, Webster, Adams, Clay, Fillmore, Seward, York, Hamilton, Franklin, and Harlan;

(viii) District No. 8. The counties of Kearney, Phelps, Hall, Howard, Greeley, Wheeler, Buffalo, Sherman, Valley, and Garfield;

(ix) District No. 9. The counties of Lincoln, Keya Paha, Rock, Brown, Loup, Blaine, Custer, Logan, McPherson, Arthur, Grant, Hooker, Thomas, and Cherry;

(x) District No. 10. The counties of Furnas, Red Willow, Hitchcock, Dundy, Chase, Hayes, Frontier, Gosper, Dawson, Perkins, and Keith; and

(xi) District No. 11. The counties of Deuel, Garden, Sheridan, Cheyenne, Morrill, Box Butte, Dawes, Sioux, Scotts Bluff, Banner, and Kimball.

(c) The Governor shall appoint members representing district numbers 1, 6, 8, and 11 to serve for terms ending April 1, 2019; members representing district numbers 2, 5, 7, and 10 to serve for terms ending April 1, 2021; and members representing district numbers 3, 4, and 9 to serve for terms ending April 1, 2023. The terms of their successors shall be four years. The Governor shall appoint their successors with the approval of the majority of the members of the Legislature. A person appointed to serve pursuant to this subsection may serve only two successive terms.

**Source:** Laws 2012, LB1053, § 10; Laws 2017, LB222, § 5.

**81-3711 Commission; duties.**

The commission shall:

- (1) Administer the Nebraska Visitors Development Act;
- (2) Prepare and approve a budget;
- (3) Elect a chairperson and vice-chairperson;
- (4) Procure and evaluate data and information necessary for the proper administration of the act;
- (5) Appoint an executive director at a salary to be fixed by the commission to conduct the day-to-day operations of the commission;
- (6) Employ personnel and contract for services which are necessary for the proper operation of the commission;
- (7) Establish a means by which any interested person has the opportunity at least annually to offer his or her ideas and suggestions relative to the commission's duties for the upcoming year;
- (8) Authorize the expenditure of funds and contracting of expenditures to carry out the act;
- (9) Keep minutes of its meetings and other books and records which clearly reflect all of the actions and transactions of the commission and keep such records open to examination during normal business hours;
- (10) Prohibit any funds appropriated to the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state or federal legislation;
- (11) Have authority to mark significant tourism attractions as provided in section 81-3711.01;
- (12) Adopt and promulgate rules and regulations to carry out the Nebraska Visitors Development Act;

(13) Develop and administer a program to provide promotional services, technical assistance, and state aid to local governments and the tourism industry;

(14) Establish written policies and procedures governing the executive director and the personnel of the commission in the expenditure and use of funds appropriated to the commission;

(15) Cooperate with federal, state, and local governments and private individuals and organizations to carry out any of the functions of the commission and purposes of the Nebraska Visitors Development Act; and

(16) Actively coordinate and develop working partnerships with other state agencies, including, but not limited to, the Commission on Indian Affairs, the Department of Economic Development, the Game and Parks Commission, the Nebraska Arts Council, the Nebraska State Historical Society, and the University of Nebraska.

**Source:** Laws 2012, LB1053, § 11; Laws 2015, LB449, § 14; Laws 2017, LB222, § 6.

**81-3711.01 Significant tourism attractions; commission; powers and duties; appoint special committee; Department of Transportation; duties.**

(1) The commission may mark significant tourism attractions in Nebraska.

(2) The commission may (a) determine what tourism attractions are significant to the State of Nebraska, (b) expend funds for the purchase of highway tourism markers, (c) designate the approximate location of highway tourism markers, (d) preserve, replace, or modify highway tourism markers, and (e) accept gifts and encourage local participation in and contribution to the erection of highway tourism markers through the use of gifts and matching-fund agreements. Such funds shall be deposited into the State Visitors Promotion Cash Fund. The commission shall not expend funds for the purchase of highway tourism markers until funding has been secured through gifts or otherwise.

(3) The commission may appoint and delegate to a special committee the duties of research and investigation to assist in the determination of tourism attractions that should be designated by highway tourism markers. The Department of Transportation shall erect and maintain highway tourism markers and shall determine the exact location of highway tourism markers with consideration given for the safety and welfare of the public.

(4) The commission may secure payment to the state for the actual replacement cost of any highway tourism markers damaged or destroyed, accidentally or otherwise. Any funds so collected shall be remitted to the State Treasurer for credit to the State Visitors Promotion Cash Fund for the procurement of highway tourism markers.

(5) Nothing in this section shall be construed to restrict the placement of any marker or signage on private property.

**Source:** Laws 2015, LB449, § 13; Laws 2017, LB339, § 291.

**81-3712 Travel and Tourism Division of Department of Economic Development; transition of employees.**

For purposes of transition, employees of the Travel and Tourism Division of the Department of Economic Development shall be considered employees of the

commission and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the commission from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

**Source:** Laws 2012, LB1053, § 12; Laws 2017, LB222, § 7.

### **81-3713 Commission; statewide strategic plan; duties.**

The commission shall develop a statewide strategic plan to cultivate and promote tourism in Nebraska. The commission shall review the plan annually and update as necessary. The plan shall include:

- (1) A review of revenue in the State Visitors Promotion Cash Fund available for tourism development at the state level;
- (2) An examination of best management practices for the tourism industry;
- (3) Marketing strategies for promoting tourism;
- (4) Methods to expand existing tourism capacity which may include encouraging regional cooperation, collaboration, or privatization; and
- (5) Recommended strategies to provide technical assistance, marketing services, and state aid to local governments and the tourism industry in Nebraska.

**Source:** Laws 1986, LB 965, § 13; Laws 2011, LB684, § 1; R.S.1943, (2008), § 81-1201.13; Laws 2012, LB782, § 193; Laws 2012, LB1053, § 13; Laws 2017, LB222, § 8.

### **81-3714 State Visitors Promotion Cash Fund; created; uses; transfers; investment.**

The State Visitors Promotion Cash Fund is created. The fund shall be administered by the commission. The fund shall consist of revenue deposited into the fund pursuant to section 81-3715 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. The commission shall use the proceeds of the fund to generally promote, encourage, and attract visitors to and within the State of Nebraska, to erect and replace highway tourism markers, to enhance the use of travel and tourism facilities within the state, to provide grants to communities and organizations, and to contract with the Department of Administrative Services to provide support services to the commission, including, but not limited to, accounting and personnel functions. The proceeds of the fund shall be in addition to funds appropriated to the commission from the General Fund. Transfers may be made from the State Visitors Promotion Cash Fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer one million dollars from the State Visitors Promotion Cash Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. Any money in the State Visitors Promotion 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 1980, LB 499, § 8; R.S.1943, (2008), § 81-1252; Laws 2012, LB1053, § 14; Laws 2015, LB449, § 15; Laws 2016, LB957, § 9; Laws 2017, LB222, § 9; Laws 2018, LB945, § 26.  
Effective date April 5, 2018.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-3721 Commission; contracts authorized.**

All contracts awarded by the commission shall be subject to sections 73-501 to 73-510. The commission shall comply with the rules, regulations, procedures, and guidelines established by the Department of Administrative Services for contracts.

**Source:** Laws 1980, LB 499, § 15; Laws 1988, LB 797, § 7; R.S.1943, (2008), § 81-1259; Laws 2012, LB1053, § 21; Laws 2017, LB222, § 10.

**81-3724 Tax Commissioner; adopt rules and regulations.**

The Tax Commissioner shall adopt and promulgate rules and regulations to carry out the collection of lodging taxes under the Nebraska Visitors Development Act.

**Source:** Laws 1980, LB 499, § 18; Laws 1988, LB 797, § 9; R.S.1943, (2008), § 81-1262; Laws 2012, LB1053, § 24; Laws 2017, LB222, § 11.

**81-3725 Marketing assistance grants; applicant; duties; innovative tourism grants; technical review committee; duties; final report.**

(1) The commission shall develop a program to provide marketing assistance grants to communities and organizations hosting national or international-caliber events held in Nebraska that have the potential to attract a significant percentage of out-of-state visitors and to generate favorable national or international press coverage for Nebraska.

(2) A community or organization applying for a marketing assistance grant shall provide a plan to the commission that includes: (a) Documentation that the event will attract out-of-state visitors; (b) details regarding the type of marketing that would be carried out with state funds; (c) methodologies used to track the impact of marketing efforts and the number of out-of-state visitors attending the event; and (d) details regarding the potential national or international press coverage that will be generated by the event.

(3) The commission shall develop a program to provide innovative tourism grants to communities or organizations that provide tourism and visitor promotion services, host events, or promote attractions which result in either (a) an increased number of nonlocal, instate visitors or (b) an increased number of both nonlocal, instate visitors and out-of-state visitors. Innovative tourism grants may include, but not be limited to, marketing assistance, planning assistance, basic support, and regional cooperation. Innovative tourism grants

shall not be used for equipment or capital facility development or improvements.

(4) The executive director shall convene a technical review committee of no fewer than three individuals representing the public sector, the private sector, and citizens at large. The technical review committee and the executive director shall review and score applications for marketing assistance grants and innovative tourism grants and forward recommendations to the commission for approval by the commission or a subcommittee of the commission.

(5) Communities and organizations receiving marketing assistance grants or innovative tourism grants authorized under this section shall provide a final report to the commission within ninety days after the completion date of the event that includes event attendance, the use of funds, and marketing impact information.

(6) The commission shall adopt and promulgate rules and regulations governing the grant programs authorized under this section.

**Source:** Laws 2015, LB449, § 16; Laws 2017, LB222, § 12.

**81-3726 Tourism Conference Cash Fund; created; use; investment.**

The Tourism Conference Cash Fund is created. The fund shall be administered by the commission. All sums of money received from fees from any conference or event held by the commission shall be deposited in the fund. The commission shall use the fund to defray expenses related to any conference or event sponsored by the commission. 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, LB449, § 17.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**81-3727 Repealed. Laws 2017, LB222, § 14.**

**81-3728 Vendors; duties.**

Vendors under contract with the commission to develop, print, and distribute publications and promotional materials on behalf of the commission shall, on a monthly basis, submit to the commission all revenue received from the sale of advertising space in such publications. Monthly submissions shall include an itemization of the sources of revenue in a format as designated by the commission. Revenue shall be remitted to the State Treasurer for credit to the Nebraska Tourism Commission Promotional Cash Fund.

**Source:** Laws 2018, LB945, § 24.

Effective date April 5, 2018.

**81-3729 Nebraska Tourism Commission Promotional Cash Fund; created; use; investment.**

The Nebraska Tourism Commission Promotional Cash Fund is hereby created. The fund shall consist of revenue submitted by vendors as designated under section 81-3728. The balance of any account established after July 1, 2017, to receive revenue from the sale of advertising shall be transferred to the Nebraska Tourism Commission Promotional Cash Fund. The commission shall use the

fund to carry out its purposes under the Nebraska Visitors Development Act. Any money in the Nebraska Tourism Commission Promotional 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 2018, LB945, § 25.  
Effective date April 5, 2018.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

## CHAPTER 82

### STATE CULTURE AND HISTORY

#### Article.

1. Nebraska State Historical Society. 82-108.02 to 82-138.
3. Nebraska Arts Council. 82-316 to 82-331.
5. Nebraska Archaeological Resources Preservation Act. 82-505.
6. Nebraska Agritourism Promotion Act. 82-601 to 82-607.
7. National Statuary Hall of the United States Capitol. 82-701 to 82-707.

#### ARTICLE 1

#### NEBRASKA STATE HISTORICAL SOCIETY

#### Section

- 82-108.02. Historical Society Fund; created; use; investment.
- 82-120. Nebraska State Historical Society; selection of projects; procurement of Highway Historical Markers; purchase, gift, or eminent domain; erection and maintenance.
- 82-129. Nebraska State Historical Society; transfer property to Willa Cather Foundation.
- 82-130. Willa Cather; real property; legal description.
- 82-137. Willa Cather; legislative findings and declarations.
- 82-138. Willa Cather Historical Building Cash Fund; created; use; investment.

#### **82-108.02 Historical Society Fund; created; use; investment.**

All funds received by the Nebraska State Historical Society for services rendered shall be remitted to the State Treasurer for credit to the Historical Society Fund which is hereby established. Funds to the credit of the fund shall only be expended, as and when appropriated by the Legislature, by the Nebraska State Historical Society for the general purposes of such society, including, but not limited to, preparation for historical events and educational projects, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Historical Society 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 1961, c. 439, § 1, p. 1357; Laws 1969, c. 584, § 110, p. 2416; Laws 1995, LB 7, § 138; Laws 2009, First Spec. Sess., LB3, § 88; Laws 2015, LB220, § 11.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **82-120 Nebraska State Historical Society; selection of projects; procurement of Highway Historical Markers; purchase, gift, or eminent domain; erection and maintenance.**

The Nebraska State Historical Society shall have authority to determine what historical events, personalities, sites, and traditions are of importance to the State of Nebraska and to justify the expenditure of public funds for the

purchase of markers of uniform style, to be known as Highway Historical Markers; to procure such markers by expending any funds specifically appropriated by the Legislature for such purpose and to designate the approximate location of such markers; to preserve present markers; to accept gifts; and have power of eminent domain to be exercised as provided in sections 76-704 to 76-724. The Department of Transportation shall erect and maintain such markers and shall determine the exact location of such markers, having due regard for the safety and welfare of the motoring public.

**Source:** Laws 1957, c. 384, § 2, p. 1340; Laws 1959, c. 441, § 3, p. 1483; R.R.S.1943, § 82-202; Laws 1969, c. 811, § 2, p. 3048; Laws 2017, LB339, § 292.

### **82-129 Nebraska State Historical Society; transfer property to Willa Cather Foundation.**

(1) In 1978, the Nebraska State Historical Society acquired, without cost to the state, clear title in the name of the State of Nebraska to the real and personal property as described in section 82-130 of the Willa Cather Pioneer Memorial and Educational Foundation, now known as the Willa Cather Foundation, except the foundation's trust account and investments which are retained by the foundation. The Nebraska State Historical Society may enter into agreements with the foundation for the operation of the Willa Cather Center and for the real property owned by the State of Nebraska, but the society shall be responsible for the general administration and continued maintenance of such property and may accept gifts, grants, and bequests for such purposes.

(2) The Nebraska State Historical Society may enter into an agreement with the Willa Cather Foundation to transfer clear title of any properties described in section 82-130 from the State of Nebraska to the Willa Cather Foundation at no cost to either the society or foundation other than any property transfer transactional costs to be shared equally by the parties.

(3) In order to carry out any agreements made according to subsection (2) of this section, the Nebraska State Historical Society may dispose of these real properties using the vacant building and excess land process under sections 72-811 to 72-818.

**Source:** Laws 1978, LB 567, § 1; Laws 2018, LB379, § 4.  
Effective date April 5, 2018.

### **82-130 Willa Cather; real property; legal description.**

The real property acquired pursuant to section 82-129 is more particularly described as follows:

(1) The Cather House described as lots 1, 2, and 3, block 24, original town of Red Cloud, Webster County, Nebraska;

(2) The Garber Bank described as lot 21, block 31, original town of Red Cloud, Webster County, Nebraska;

(3) The Grace Episcopal Church described as lots 19, 20, 21, 22, 23, and 24, block 6, original town, now the city of Red Cloud, Webster County, Nebraska;

(4) The St. Juliana Catholic Church described as lots 17, 18, 19, 20, 21, and 22, block 3, Railroad addition to the city of Red Cloud, Webster County, Nebraska;



(5) The Burlington Depot described as lots 10, 11, 12, and 13, block 19, Railroad addition to the city of Red Cloud, Webster County, Nebraska; and

(6) The Antonia Farmhouse described as follows: Commencing at the northeast corner of the southeast quarter of section 27, township 4 north, range 11 west of the sixth principal meridian, Webster County, Nebraska, thence south 895 feet; thence west 155 feet to the point of beginning; thence west a distance of 90 feet; thence south at a right angle a distance of 137 feet; thence east at a right angle a distance of 90 feet; thence north a distance of 137 feet to the point of beginning.

**Source:** Laws 1978, LB 567, § 2; Laws 2018, LB379, § 5.  
Effective date April 5, 2018.

### **82-137 Willa Cather; legislative findings and declarations.**

The Legislature finds and declares that:

(1) Willa Cather is a significant historical and literary figure of Nebraska;

(2) There exist many Cather-related properties in Webster County that provide irreplaceable historical value to the ongoing interpretation of the significance of Cather;

(3) These properties also spur economic activity by means of national and international tourism and annual literary conferences; and

(4) It is the intent of the Legislature to preserve these properties for future generations.

**Source:** Laws 2018, LB379, § 1.  
Effective date April 5, 2018.

### **82-138 Willa Cather Historical Building Cash Fund; created; use; investment.**

The Willa Cather Historical Building Cash Fund is created. The fund shall be administered by the Nebraska State Historical Society. The fund shall consist of any funds appropriated by the Legislature and money donated as gifts, bequests, or other contributions from public or private entities. The fund shall be used to preserve and restore the real property described in section 82-130. 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 2018, LB379, § 2.  
Effective date April 5, 2018.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

## **ARTICLE 3**

### **NEBRASKA ARTS COUNCIL**

Section

82-316. Nebraska Arts Council Cash Fund; created; deposits; disbursements; investment.

82-326. Public buildings; appropriation; works of art; administration and installation; art maintenance fund.

## Section

82-331. Nebraska Cultural Preservation Endowment Fund; created; use; investment.

**82-316 Nebraska Arts Council Cash Fund; created; deposits; disbursements; investment.**

There is hereby created the Nebraska Arts Council Cash Fund. The fund shall contain all sums of money received from fees from any conference, performance, or exhibition held by the council or by groups who have contracted with the council for such events and all sums of money collected under section 82-326. The Nebraska Arts Council shall use the fund to pay the costs related to the administration and sponsoring of any conference, performance, or exhibition by the Nebraska Arts Council or by groups who have contracted with the council for such events or to pay the costs related to the repair, restoration, and maintenance of artwork installed under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03. All disbursements 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 1977, LB 512, § 1; Laws 2016, LB957, § 10.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**82-326 Public buildings; appropriation; works of art; administration and installation; art maintenance fund.**

The amount of money made available from any appropriations under the provisions of sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03 shall be used, in addition to the cost of the works of art, to provide for the administration by the contracting agency, the architect, and the Nebraska Arts Council, and for costs of installation of the works of art as negotiated between the contracting agency and the contracted artist. The Nebraska Arts Council may designate a portion of the amount appropriated for administration for an art maintenance fund which shall be used to repair or restore all works of art acquired under such sections and which shall be credited to the Nebraska Arts Council Cash Fund.

**Source:** Laws 1978, LB 664, § 18; Laws 2010, LB1063, § 1; Laws 2016, LB957, § 11.

**82-331 Nebraska Cultural Preservation Endowment Fund; created; use; investment.**

(1) There is hereby established in the state treasury a trust fund to be known as the Nebraska Cultural Preservation Endowment Fund. The fund shall consist of funds appropriated or transferred by the Legislature, and only the earnings of the fund may be used as provided in this section.

(2) On August 1, 1998, the State Treasurer shall transfer five million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund.

(3) Except as provided in subsection (4) of this section, it is the intent of the Legislature that the State Treasurer shall transfer (a) an amount not to exceed

one million dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2013, (b) an amount not to exceed five hundred thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2014, (c) an amount not to exceed seven hundred fifty thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31 of 2015 and 2016, and (d) an amount not to exceed five hundred thousand dollars from the General Fund to the Nebraska Cultural Preservation Endowment Fund annually on December 31 beginning in 2019 and continuing through December 31, 2028.

(4) Prior to the transfer of funds from any state account into the Nebraska Cultural Preservation Endowment Fund, the Nebraska Arts Council shall provide documentation to the budget division of the Department of Administrative Services that qualified endowments have generated a dollar-for-dollar match of new money, up to the amount of state funds authorized by the Legislature to be transferred to the Nebraska Cultural Preservation Endowment Fund. For purposes of this section, new money means a contribution to a qualified endowment generated after July 1, 2011. Contributions not fully matched by state funds shall be carried forward to succeeding years and remain available to provide a dollar-for-dollar match for state funds. For an endowment to be a qualified endowment (a) the endowment must meet the standards set by the Nebraska Arts Council or Nebraska Humanities Council, (b) the endowment must be intended for long-term stabilization of the organization, and (c) the funds of the endowment must be endowed and only the earnings thereon expended. The budget division of the Department of Administrative Services shall notify the State Treasurer to execute a transfer of state funds up to the amount specified by the Legislature, but only to the extent that the Nebraska Arts Council has provided documentation of a dollar-for-dollar match. State funds not transferred shall be carried forward to the succeeding year and be added to the funds authorized for a dollar-for-dollar match during that year.

(5) The Legislature shall not appropriate or transfer money from the Nebraska Cultural Preservation Endowment Fund for any purpose other than the purposes stated in sections 82-330 to 82-333, except that the Legislature may appropriate or transfer money from the fund upon a finding that the purposes of such sections are not being accomplished by the fund.

(6) Any money in the Nebraska Cultural Preservation Endowment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) All investment earnings from the Nebraska Cultural Preservation Endowment Fund shall be credited to the Nebraska Arts and Humanities Cash Fund.

**Source:** Laws 1998, LB 799, § 2; Laws 2008, LB1165, § 1; Laws 2009, LB316, § 23; Laws 2010, LB1063, § 3; Laws 2011, LB378, § 30; Laws 2012, LB969, § 11; Laws 2013, LB199, § 39; Laws 2016, LB957, § 12; Laws 2017, LB331, § 55.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 5

## NEBRASKA ARCHAEOLOGICAL RESOURCES PRESERVATION ACT

## Section

82-505. State or state-funded undertaking; notice required; exemption from act; act, how construed.

**82-505 State or state-funded undertaking; notice required; exemption from act; act, how construed.**

(1) Except as provided in subsection (2) of this section, the head of any state agency having jurisdiction over a proposed state or state-funded undertaking, which has potential to affect archaeological resources or sites, shall, prior to the approval of the expenditure of any state funds on the undertaking, notify the State Archaeology Office of the undertaking and cooperate with the office to identify and develop measures to mitigate the effect of the undertaking on any archaeological site or resource that is included in or eligible for inclusion in the National Register of Historic Places.

(2) The Department of Transportation shall be exempt from the provisions of the Nebraska Archaeological Resources Preservation Act as long as a cooperative agreement exists between the Department of Transportation and the Nebraska State Historical Society which ensures that all highway construction projects meet federal historic preservation legislation and regulations, and such federal preservation legislation and regulations fulfill or exceed the objectives and standards of the act.

(3) Nothing in the Nebraska Archaeological Resources Preservation Act shall be construed to abridge the rights of private property owners and in no case shall a private property owner be required to pay for activities undertaken by the State Archaeology Office.

**Source:** Laws 2005, LB 211, § 5; Laws 2017, LB339, § 293.

## ARTICLE 6

## NEBRASKA AGRITOURISM PROMOTION ACT

## Section

82-601. Act, how cited.

82-602. Purposes of act.

82-603. Terms, defined.

82-604. Owner; liability for injury, death, or damages; limitation on action; exception.

82-605. Liability of owner.

82-606. Participant; owner duties; warning notice; contents.

82-607. Participant; duty to exercise due care.

**82-601 Act, how cited.**

Sections 82-601 to 82-607 shall be known and may be cited as the Nebraska Agritourism Promotion Act.

**Source:** Laws 2015, LB329, § 1.

**82-602 Purposes of act.**

The purposes of the Nebraska Agritourism Promotion Act are to:

(1) Promote tourism and rural economic development by encouraging owners of farms, ranches, and other rural land, including agricultural, historical,

ecological, cultural, and natural attractions, to allow access to members of the public for educational, entertainment, and recreational purposes;

(2) Promote a better understanding by visitors of agricultural operations and features, including the production of livestock and agricultural products, the land and other natural attributes, and wildlife; and

(3) Encourage agritourism activities by limiting civil liability of owners of farms, ranches, and other rural land.

**Source:** Laws 2015, LB329, § 2.

### **82-603 Terms, defined.**

For purposes of the Nebraska Agritourism Promotion Act:

(1) Agritourism activities include any one or any combination of the following: Hunting, fishing, swimming, boating, canoeing, kayaking, tubing, water sports, camping, picnicking, hiking, backpacking, bicycling, horseback riding, nature study, birding, farm, ranch, and vineyard tours and activities, harvest-your-own activities, waterskiing, snow-shoeing, cross-country skiing, visiting and viewing historical, ecological, archaeological, scenic, or scientific sites, and similar activities;

(2) Fee means the amount of money asked in return for an invitation or permission to enter the premises;

(3) Inherent risks means those conditions, dangers, or hazards that are an integral part of land or waters used for agritourism activities, including the following:

(a) Surface and subsurface conditions and natural conditions of land, vegetation, and waters;

(b) The behavior of wild or domestic animals;

(c) The ordinary dangers of structures or equipment ordinarily used in farming or ranching operations when such structures or equipment are used for farming or ranching purposes; and

(d) The potential of a participant to act in a negligent way that may contribute to injury to the participant or others whether by failing to follow safety procedures or failing to act with reasonable caution while engaging in an agritourism activity;

(4) Owner includes any person who is a tenant, lessee, occupant, or person in control of the premises or any agent of such a person whose gross annual income from agritourism activities does not exceed five hundred thousand dollars;

(5) Participant means an individual who engages in agritourism activities on premises owned by another but does not include an owner of the premises or any agent, employee, or contractor of the owner;

(6) Person means an individual, corporation, limited liability company, partnership, unincorporated association, or other legal or commercial entity and does not include a governmental entity or political subdivision; and

(7) Premises includes land, roads, pathways, trails, water, watercourses, private ways, and buildings and structures attached to the land outside of cities

and villages and does not include land zoned commercial, industrial, or residential.

**Source:** Laws 2015, LB329, § 3.

**82-604 Owner; liability for injury, death, or damages; limitation on action; exception.**

(1) Except as provided in section 82-605, an owner who allows a participant on the owner's premises for agritourism activities shall not be liable for injury to or death of the participant or damage to the participant's property resulting from an inherent risk on the owner's premises.

(2) Except as provided in section 82-605, no participant or participant's representative shall maintain an action against or recover for injury to or death of the participant or damage to the participant's property resulting from an inherent risk on the owner's premises when such owner allows the participant on the owner's premises for agritourism activities.

**Source:** Laws 2015, LB329, § 4.

**82-605 Liability of owner.**

Nothing in the Nebraska Agritourism Promotion Act limits any liability of an owner:

(1) Who fails to exercise reasonable care to protect against the particular dangers of structures or equipment used or kept on the owner's premises;

(2) Who has actual knowledge of a particular dangerous condition on the owner's premises and does not make the particular danger known to the participant if the particular danger is a proximate cause of injury to or death of the participant or damage to the participant's property;

(3) Who reasonably should have known of a particular dangerous condition of equipment used or kept on the owner's premises and does not make the particular danger known to the participant if the particular danger is a proximate cause of injury to or death of the participant or damage to the participant's property;

(4) Who fails to properly train or supervise or improperly or inadequately trains or supervises employees who are actively involved in agritourism activities and an act or omission of the employee resulting from improper or inadequate training or supervision is a proximate cause of injury to or death of the participant or damage to the participant's property; or

(5) Who commits an act or omission that is a proximate cause of injury to or the death of the participant or damage to the participant's property if the act or omission:

(a) Constitutes willful or wanton disregard for the safety of the participant;

(b) Constitutes gross negligence;

(c) Was intentional;

(d) Did not constitute an inherent risk;

(e) Occurred while the owner or the owner's employees were under the influence of alcohol or illegal drugs; or

(f) Would otherwise be a violation of any other statute or rule or regulation of the State of Nebraska, a state regulatory body, or a political subdivision.

**Source:** Laws 2015, LB329, § 5.

**82-606 Participant; owner duties; warning notice; contents.**

(1) Nothing in section 82-604 limits any liability of an owner who receives a fee for allowing a participant on the premises if the owner fails to do at least one of the following:

(a) Post and maintain signage containing the warning as described in subsection (2) of this section in a clearly visible and conspicuous location at or near the entrance to the property used for agritourism activities; or

(b) Include the warning as described in subsection (2) of this section in any written contract between the owner of the property and each participant allowed on the premises for a fee. Such warning shall be in a conspicuous location within the contract and be written in not less than twelve-point boldface type.

(2) The warning notice shall read as follows: WARNING — Under Nebraska law, an owner of property, including lands and waters, is not liable for the injury to or death of the participant in agritourism activities or damage to the participant’s property resulting from the inherent risks of such activities. Inherent risks include, without limitation, the risk of animals and land and water conditions, the ordinary dangers of structures or equipment ordinarily used in farming or ranching operations, and the potential for you or another participant to act in a negligent manner that may contribute to your own injury or death. You are assuming the risk of participating in the agritourism activities for which you are entering the owner’s premises.

**Source:** Laws 2015, LB329, § 6.

**82-607 Participant; duty to exercise due care.**

Nothing in the Nebraska Agritourism Promotion Act limits the obligation of a participant entering upon or using premises of another for agritourism activities to exercise due care in his or her use of such premises and in his or her agritourism activities on the premises.

**Source:** Laws 2015, LB329, § 7.

**ARTICLE 7**

**NATIONAL STATUARY HALL OF THE UNITED STATES CAPITOL**

Section

- 82-701. Legislative findings and declarations.
- 82-702. Replacement of Julius Sterling Morton statue; Secretary of State; duties.
- 82-703. Willa Cather National Statuary Hall Selection Committee; created; members; duties; powers.
- 82-704. Willa Cather National Statuary Hall Cash Fund; created; use; investment.
- 82-705. Replacement of William Jennings Bryan statue; Secretary of State; duties.
- 82-706. Chief Standing Bear National Statuary Hall Selection Committee; created; members; duties; powers.
- 82-707. Chief Standing Bear National Statuary Hall Cash Fund; created; use; investment.

**82-701 Legislative findings and declarations.**

The Legislature finds and declares:

(1) In 1864, the United States Congress established the National Statuary Hall Collection in the Old Hall of the House of Representatives in the United States Capitol and authorized each state to contribute to the hall collection two statues that represent important historical figures of each state;

(2) Nebraska currently has on display in the National Statuary Hall Collection statues of William Jennings Bryan and Julius Sterling Morton given by the State of Nebraska in 1937;

(3) In 2000, the United States Congress enacted legislation authorizing states to request that the Joint Committee on the Library of Congress approve the replacement of statues the state had provided for display in the hall collection;

(4)(a) Willa Cather is a significant historical and literary figure from Red Cloud, Nebraska;

(b) Willa Cather immortalized Nebraska in such works as *My Antonia* and *O Pioneers!*;

(c) Willa Cather won the 1923 Pulitzer Prize for her novel *One of Ours*; and

(d) Willa Cather is worthy of recognition in the National Statuary Hall; and

(5)(a) Ponca Chief Standing Bear is a significant historical and civil rights figure from Nebraska's Niobrara River Valley region;

(b) Chief Standing Bear's epic return to his Nebraska homeland to bury his son culminated in the historic court case, *United States ex rel. Crook v. Standing Bear*, which took place in Omaha, Nebraska, in May 1879;

(c) The court case set the historic precedent that Chief Standing Bear, as a Native American individual, was found to be a person under the law; and

(d) Chief Standing Bear is worthy of recognition in the National Statuary Hall.

**Source:** Laws 2018, LB807, § 1.

Effective date April 24, 2018.

**82-702 Replacement of Julius Sterling Morton statue; Secretary of State; duties.**

The Secretary of State shall submit to the United States Architect of the Capitol for his or her review for completeness a written request to approve the replacement of the statue of Julius Sterling Morton currently on display in the National Statuary Hall Collection in the United States Capitol with a statue of Willa Cather. The written request shall request authorization to provide a new statue, a description of the location in Nebraska where the replaced statue will be displayed after it is transferred, and a copy of the Nebraska statute authorizing such replacement. After such review, it is the intent of the Legislature that the architect forward the request to the Joint Committee on the Library of Congress for its approval or denial. If the request is approved by the committee, the architect and the Willa Cather National Statuary Hall Selection Committee created pursuant to section 82-703, acting on behalf of the State of Nebraska, shall enter into an agreement as provided in 2 U.S.C. 2132(b).

**Source:** Laws 2018, LB807, § 2.

Effective date April 24, 2018.

**82-703 Willa Cather National Statuary Hall Selection Committee; created; members; duties; powers.**



(1) The Willa Cather National Statuary Hall Selection Committee is created. The committee shall consist of members of the Nebraska Hall of Fame Commission created pursuant to section 72-724.

(2) Upon approval by the Joint Committee on the Library of Congress and pursuant to the agreement described in section 82-702, the Willa Cather National Statuary Hall Selection Committee shall:

(a) Select a sculptor to create a statue of Willa Cather to be placed in the National Statuary Hall and review and approve the plans for the statue; and

(b) Identify a method to obtain necessary funding to pay for all of the following. All funds shall be privately donated and separately managed. No state funds shall be expended for such purposes:

(i) The sculptor for designing and carving or casting the statue;

(ii) The design and fabrication of the pedestal;

(iii) The transportation of the statue and pedestal to the United States Capitol;

(iv) The removal and transportation of the replaced statue;

(v) The temporary placement of the new statue in the Rotunda of the United States Capitol for the unveiling ceremony;

(vi) The unveiling ceremony; and

(vii) Any other expenses that the committee determines are necessary to incur.

(3) The committee has the authority to receive and disburse gifts.

(4) The committee shall execute the requirements of this section no later than June 30, 2023.

**Source:** Laws 2018, LB807, § 3.  
Effective date April 24, 2018.

**82-704 Willa Cather National Statuary Hall Cash Fund; created; use; investment.**

The Willa Cather National Statuary Hall Cash Fund is created. The fund shall be administered by the Nebraska State Historical Society. The fund shall consist of privately donated funds pursuant to subdivision (2)(b) of section 82-703. 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 2018, LB807, § 4.  
Effective date April 24, 2018.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**82-705 Replacement of William Jennings Bryan statue; Secretary of State; duties.**

The Secretary of State shall submit to the United States Architect of the Capitol for his or her review for completeness a written request to approve the replacement of the statue of William Jennings Bryan currently on display in the National Statuary Hall Collection in the United States Capitol with a statue of Ponca Chief Standing Bear. The written request shall request authorization to

provide a new statue, a description of the location in Nebraska where the replaced statue will be displayed after it is transferred, and a copy of the Nebraska statute authorizing such replacement. After such review, it is the intent of the Legislature that the architect forward the request to the Joint Committee on the Library of Congress for its approval or denial. If the request is approved by the committee, the architect and the Chief Standing Bear National Statuary Hall Selection Committee created pursuant to section 82-706, acting on behalf of the State of Nebraska, shall enter into an agreement as provided in 2 U.S.C. 2132(b).

**Source:** Laws 2018, LB807, § 5.  
Effective date April 24, 2018.

**82-706 Chief Standing Bear National Statuary Hall Selection Committee; created; members; duties; powers.**

(1) The Chief Standing Bear National Statuary Hall Selection Committee is created. The committee shall consist of (a) a representative of the Commission on Indian Affairs, selected by the chairperson of the commission, (b) a member of the State-Tribal Relations Committee of the Legislature, selected by the chairperson of the committee, (c) the chairperson of the Lincoln Partners for Public Art Development or its successor, and (d) the Historic Preservation Planner of the City of Lincoln.

(2) Upon approval by the Joint Committee on the Library of Congress and pursuant to the agreement described in section 82-705, the Chief Standing Bear National Statuary Hall Selection Committee may:

(a) Select a sculptor to create a statue of Chief Standing Bear to be placed in the National Statuary Hall and review and approve the plans for the statue; and

(b) Identify a method to obtain necessary funding to pay for all of the following. All funds shall be privately donated and separately managed. No state funds shall be expended for such purposes:

(i) The sculptor for designing and carving or casting the statue;

(ii) The design and fabrication of the pedestal;

(iii) The transportation of the statue and pedestal to the United States Capitol;

(iv) The removal and transportation of the replaced statue;

(v) The temporary placement of the new statue in the Rotunda of the United States Capitol for the unveiling ceremony;

(vi) The unveiling ceremony; and

(vii) Any other expenses that the committee determines are necessary to incur.

(3) The committee has the authority to receive and disburse gifts.

(4) The committee shall execute the requirements of this section no later than June 30, 2023.

**Source:** Laws 2018, LB807, § 6.  
Effective date April 24, 2018.

**82-707 Chief Standing Bear National Statuary Hall Cash Fund; created; use; investment.**

The Chief Standing Bear National Statuary Hall Cash Fund is created. The fund shall be administered by the Commission on Indian Affairs. The fund shall consist of privately donated funds pursuant to subdivision (2)(b) of section 82-706. 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 2018, LB807, § 7.  
Effective date April 24, 2018.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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



STATE INSTITUTIONS

**CHAPTER 83**  
**STATE INSTITUTIONS**

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**ARTICLE 1**  
**MANAGEMENT**

(a) GENERAL PROVISIONS

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## STATE INSTITUTIONS

### Section

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- 83-1,121. Parolee; legal custody of Board of Parole; action of board.
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- 83-1,135.05. Rules and regulations; inmate outside correctional facility.

## (a) GENERAL PROVISIONS

**83-107.01 Department of Health and Human Services; official names of institutions under supervision.**

The official names of the state institutions under the supervision of the Department of Health and Human Services shall be as follows: (1) Beatrice State Developmental Center, (2) Lincoln Regional Center, (3) Norfolk Regional Center, (4) Hastings Regional Center, (5) Youth Rehabilitation and Treatment Center-Kearney, and (6) Youth Rehabilitation and Treatment Center-Geneva.

**Source:** Laws 1945, c. 250, § 1, p. 786; Laws 1949, c. 291, § 1, p. 994; Laws 1951, c. 318, § 1, p. 1086; Laws 1955, c. 341, § 2, p. 1055; Laws 1959, c. 418, § 9, p. 1403; Laws 1959, c. 419, § 10, p. 1412; Laws 1961, c. 416, § 12, p. 1269; Laws 1963, c. 528, § 2, p. 1656; Laws 1969, c. 814, § 6, p. 3061; Laws 1969, c. 818, § 7, p. 3117; Laws 1972, LB 1253, § 1; Laws 1973, LB 563, § 19; Laws 1975, LB 466, § 1; Laws 1976, LB 974, § 1; Laws 1996, LB 1044, § 896; Laws 1997, LB 396, § 22; Laws 1998, LB 1073, § 167; Laws 2006, LB 994, § 146; Laws 2007, LB296, § 779; Laws 2017, LB340, § 20.

## Cross References

For provisions relating to the Beatrice State Developmental Center, see sections 83-217 to 83-227.02.

For provisions relating to the state hospitals for the mentally ill, see sections 83-305 to 83-357.

**83-108 Department of Health and Human Services; institutions controlled.**

The Department of Health and Human Services shall have oversight and general control of the Beatrice State Developmental Center, the hospitals for the mentally ill, such skilled nursing care and intermediate care facilities as may be established by the department, facilities and programs operated by the Office of Juvenile Services, and all charitable institutions.

**Source:** Laws 1913, c. 179, § 9, p. 537; R.S.1913, § 7187; C.S.1922, § 6838; C.S.1929, § 83-109; Laws 1935, c. 185, § 1, p. 685; C.S.Supp.,1941, § 83-109; R.S.1943, § 83-108; Laws 1949, c. 291, § 2, p. 994; Laws 1959, c. 442, § 1, p. 1485; Laws 1959, c. 418, § 13, p. 1405; Laws 1959, c. 419, § 11, p. 1412; Laws 1961, c. 416, § 14, p. 1270; Laws 1963, c. 526, § 3, p. 1649; Laws

1963, c. 528, § 3, p. 1656; Laws 1969, c. 814, § 7, p. 3061; Laws 1973, LB 563, § 20; Laws 1973, LB 536, § 2; Laws 1996, LB 1044, § 897; Laws 1997, LB 396, § 23; Laws 2017, LB340, § 21.

**83-109 Patients and residents; admission to state institutions; records; to whom accessible; transfers; investigations; appeals.**

The Department of Health and Human Services shall have general control over the admission of patients and residents to all institutions over which it has jurisdiction. Each individual shall be assigned to the institution best adapted to care for him or her. A record of every patient or resident of every institution shall be kept complete from the date of his or her entrance to the date of his or her discharge or death, such records to be accessible only (1) to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, and any public or private agency under contract to provide facilities, programs, and patient services, (2) upon order of a judge or court, (3) in accordance with sections 20-161 to 20-166, (4) to the Nebraska State Patrol pursuant to section 69-2409.01, (5) to those portions of the record required to be released to a victim as defined in section 29-119 in order to comply with the victim notification requirements pursuant to subsections (4) and (5) of section 81-1850, (6) to law enforcement and county attorneys when a crime occurs on the premises of an institution, (7) upon request when a patient or resident has been deceased for fifty years or more, or (8) to current treatment providers. In addition, a patient or resident or his or her legally authorized representative may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written consent. Transfers of patients or residents from one institution to another shall be within the exclusive jurisdiction of the department and shall be recorded in the office of the department, with the reasons for such transfers. When the department is unable to assign a patient to a regional center or commit him or her to any other institution at the time of application, a record thereof shall be kept and the patient accepted at the earliest practicable date. The superintendents of the regional centers and Beatrice State Developmental Center shall notify the department immediately whenever there is any question regarding the propriety of the commitment, detention, transfer, or placement of any person admitted to a state institution. The department shall then investigate the matter and take such action as shall be proper. Any interested party who is not satisfied with such action may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act. The department shall have full authority on its own suggestion or upon the application of any interested person to investigate the physical and mental status of any patient or resident of any regional center or the Beatrice State Developmental Center. If upon such investigation the department considers such patient or resident fit to be released from the regional center or Beatrice State Developmental Center, it shall cause such patient or resident to be discharged or released on convalescent leave.

**Source:** Laws 1913, c. 179, § 27, p. 546; R.S.1913, § 7205; C.S.1922, § 6856; C.S.1929, § 83-127; R.S.1943, § 83-109; Laws 1961, c. 416, § 15, p. 1270; Laws 1963, c. 525, § 1, p. 1645; Laws 1971, LB 419, § 1; Laws 1975, LB 206, § 1; Laws 1979, LB 322, § 61; Laws 1981, LB 545, § 39; Laws 1985, LB 315, § 1; Laws 1988,



LB 697, § 7; Laws 1988, LB 352, § 182; Laws 1996, LB 1044, § 899; Laws 1996, LB 1055, § 16; Laws 1997, LB 325, § 2; Laws 2016, LB816, § 2.

Cross References

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

**Burial of dead from state institutions**, portion of Wyuka Cemetery reserved for, see section 12-102.

**83-123 Department of Correctional Services; license plates; materials; Department of Motor Vehicles; duties.**

(1) Out of the fund appropriated by the Legislature, the Department of Correctional Services shall purchase the materials for and manufacture the license plates each year for the various counties and the Department of Motor Vehicles. The Department of Motor Vehicles shall furnish to the Department of Correctional Services the information concerning license plates through a secure process and system, together with the number of plates to be manufactured for each county and the Department of Motor Vehicles for the current licensing year.

(2) The Department of Correctional Services shall deliver the license plates each year as directed by the Department of Motor Vehicles through a secure process and system.

**Source:** Laws 1931, c. 22, § 2, p. 95; C.S.Supp., 1941, § 83-137; R.S. 1943, § 83-123; Laws 1951, c. 319, § 2, p. 1091; Laws 1953, c. 207, § 14, p. 730; Laws 1959, c. 442, § 3, p. 1486; Laws 1959, c. 284, § 5, p. 1078; Laws 1969, c. 497, § 2, p. 2067; Laws 1993, LB 31, § 24; Laws 1993, LB 112, § 46; Laws 2009, LB49, § 9; Laws 2017, LB263, § 101.

Operative date January 1, 2019.

(c) PROPERTY AND SUPPLIES

**83-137 State institutions; adjacent highways; improvement.**

Upon written request being filed with the Department of Transportation by the chief executive officer of any state institution, located more than one-half mile and not exceeding three miles from a railroad unloading track or permanent highway leading to a railroad unloading track, requesting aid for the improvement of a highway connecting the institution with the permanent highway or railroad unloading track, the department shall make a careful estimate of the cost of improving the highway, and the amount of the special benefits to abutting property, together with the excess of the cost of the improvement above the benefits. If the local authorities in charge of the highway shall adequately provide for the payment of the special benefits and one-half of the excess of the cost of the improvement, the department shall pay the remaining one-half of the excess from funds appropriated for that purpose.

**Source:** Laws 1919, c. 215, § 2, p. 927; C.S. 1922, § 6862; C.S. 1929, § 83-133; R.S. 1943, § 83-137; Laws 2017, LB339, § 294.

Cross References

**Procedure for acquiring institutional land for county roads and state highways**, see sections 39-1323 and 39-1703.

**83-150 Correctional Industries Revolving Fund; created; use; investment.**

All funds received by the Department of Correctional Services under sections 83-144 to 83-152 and from the recycling of material used in the production of goods or the provision of services by the department's correctional industries program shall be remitted to the State Treasurer for credit to the Correctional Industries Revolving Fund, which fund is hereby created. The fund shall be administered by the Director of Correctional Services. The fund (1) shall be used to pay all proper expenses incident to the administration of sections 83-144 to 83-152 and (2) may be used to carry out section 83-186.01, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Correctional Industries 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 1935, c. 183, § 9, p. 681; Laws 1939, c. 135, § 1, p. 580; C.S.Supp.,1941, § 83-964; R.S.1943, § 83-150; Laws 1959, c. 442, § 5, p. 1487; Laws 1969, c. 820, § 2, p. 3126; Laws 1969, c. 584, § 111, p. 2417; Laws 1973, LB 563, § 33; Laws 1992, Third Spec. Sess., LB 2, § 2; Laws 1994, LB 1066, § 129; Laws 2013, LB483, § 2; Laws 2016, LB1080, § 3.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **83-153 Money or personal property to credit of inmate or patient; claim; time for presentment.**

Any claim to money or personal property in the hands of the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs to the credit of an inmate or patient of any institution subject to the jurisdiction of such departments shall be required to be asserted within two years from and after either (1) the date of the death of the inmate or patient, while confined in such institution, or (2) the date of the discharge of the inmate or patient from such institution. If such claim is not presented within the time limited by this section, it shall be forever barred.

**Source:** Laws 1953, c. 352, § 1, p. 1128; Laws 1973, LB 563, § 34; Laws 1996, LB 1044, § 916; Laws 2018, LB827, § 4.  
Effective date July 19, 2018.

### **83-154 Money to credit of inmate or patient; claim; failure to assert; disposition.**

Upon the failure to assert a claim for money within two years as prescribed by section 83-153, the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs shall transfer such money to a special fund to be set up for the use and benefit of all the inmates or patients of the institution in which the deceased or discharged inmate or patient was confined.

**Source:** Laws 1953, c. 352, § 2, p. 1128; Laws 1973, LB 563, § 35; Laws 1996, LB 1044, § 917; Laws 2018, LB827, § 5.  
Effective date July 19, 2018.

**83-155 Personal property to credit of inmate or patient; claim; failure to assert; sale; disposition of money.**

Upon the failure to assert a claim for personal property within two years as prescribed by section 83-153, the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs shall sell the property, either with or without notice at either public or private sale, and shall place the proceeds of such sale in the special fund provided for by section 83-154.

**Source:** Laws 1953, c. 352, § 3, p. 1128; Laws 1973, LB 563, § 36; Laws 1996, LB 1044, § 918; Laws 2018, LB827, § 6.  
Effective date July 19, 2018.

**83-156 Money or personal property to credit of inmate or patient; delivery to owner or heirs not prohibited.**

Nothing contained in sections 83-153 to 83-156 shall be construed in such a manner as to prohibit the Department of Health and Human Services, the Department of Correctional Services, or the Department of Veterans' Affairs from voluntarily remitting or delivering to any present or former inmate or patient of any state institution, subject to the jurisdiction of such department, or to his or her heirs, legatees, or other persons lawfully entitled to the same, any money or other personal property in the hands of the department to the credit of such inmate or patient, either during the confinement of such inmate or patient, or at any time thereafter.

**Source:** Laws 1953, c. 352, § 4, p. 1128; Laws 1973, LB 563, § 37; Laws 1996, LB 1044, § 919; Laws 2018, LB827, § 7.  
Effective date July 19, 2018.

(f) CORRECTIONAL SERVICES, PAROLE, AND PARDONS

**83-170 Terms, defined.**

As used in the Nebraska Treatment and Corrections Act, unless the context otherwise requires:

- (1) Board means the Board of Parole;
- (2) Committed offender means any person who, under any provision of law, is sentenced or committed to a facility operated by the department or is sentenced or committed to the department other than a person adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 by a juvenile court;
- (3) Department means the Department of Correctional Services;
- (4) Director means the Director of Correctional Services;
- (5) Director of Supervision and Services means the Director of Supervision and Services appointed pursuant to section 83-1,101;
- (6) Facility means any prison, reformatory, training school, reception center, community guidance center, group home, or other institution operated by the department;
- (7) Good time means any reduction of sentence granted pursuant to sections 83-1,107 and 83-1,108;

(8) Maximum term means the maximum sentence provided by law or the maximum sentence imposed by a court, whichever is shorter;

(9) Minimum term means the minimum sentence provided by law or the minimum sentence imposed by a court, whichever is longer;

(10) Pardon authority means the power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations;

(11) Parole term means the time from release on parole to the completion of the maximum term, reduced by good time;

(12) Person committed to the department means any person sentenced or committed to a facility within the department;

(13) Restrictive housing means conditions of confinement that provide limited contact with other offenders, strictly controlled movement while out of cell, and out-of-cell time of less than twenty-four hours per week; and

(14) Solitary confinement means the status of confinement of an inmate in an individual cell having solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons.

**Source:** Laws 1969, c. 817, § 1, p. 3072; Laws 1973, LB 563, § 38; Laws 1975, LB 567, § 1; Laws 1976, LB 621, § 1; Laws 1988, LB 790, § 34; Laws 1992, LB 816, § 1; Laws 2015, LB598, § 22; Laws 2018, LB841, § 15.  
Effective date July 19, 2018.

#### Cross References

Inmate transfer to University of Nebraska Medical Center for psychiatric diagnosis or treatment, see section 83-305.03.

### **83-171 Department of Correctional Services; created; duties.**

There is hereby created a Department of Correctional Services which shall:

(1) Maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department and for the safekeeping of such other persons as may be remanded to the department in accordance with law;

(2) Develop policies and programs for the correctional treatment and rehabilitation of persons committed to the department;

(3) Supervise parolees who have been committed to the department; and

(4) Until July 1, 2016, administer parole services in the facilities and in the community and, beginning July 1, 2016, cooperate with the Board of Parole and Division of Parole Supervision to assist with the efficient administration of parole services in the facilities and in the community.

**Source:** Laws 1969, c. 817, § 2, p. 3073; Laws 1973, LB 563, § 39; Laws 1993, LB 31, § 26; Laws 2015, LB598, § 23; Laws 2018, LB841, § 16.  
Effective date July 19, 2018.

### **83-173 Director of Correctional Services; duties.**

The Director of Correctional Services shall:

(1) Supervise and be responsible for the administration of the Department of Correctional Services;

(2) Establish, consolidate, or abolish any administrative subdivision within the department and appoint and remove for cause the heads thereof and delegate appropriate powers and duties to them;

(3) Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons committed to the department;

(4) Appoint and remove the chief executive officer of each facility and delegate appropriate powers and duties to him or her;

(5) Appoint and remove employees of the department and delegate appropriate powers and duties to them;

(6) Adopt and promulgate rules and regulations for the management, correctional treatment, and rehabilitation of persons committed to the department, the administration of facilities, and the conduct of officers and employees under his or her jurisdiction;

(7) Designate the place of confinement of persons committed to the department subject to section 83-176;

(8) Establish and administer policies that ensure that complete and up-to-date electronic records are maintained for each person committed to the department and which also ensure privacy protections. Electronic records shall include programming recommendations, program completions, time spent in housing other than general population, and medical records, including mental and behavioral health records;

(9) Collect, develop, and maintain statistical information concerning persons committed to the department, sentencing practices, and correctional treatment as may be useful in penological research or in the development of treatment programs;

(10) Provide training programs designed to equip employees for duty in the facilities and related services of the department and to raise and maintain the educational standards and the level of performance of such employees;

(11) Notify law enforcement agencies of upcoming furloughs as required by section 83-173.01;

(12) Issue or authorize the issuance of a warrant for the arrest of any person committed to the department who has escaped from the custody of the department; and

(13) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 817, § 4, p. 3074; Laws 1973, LB 563, § 41; Laws 1979, LB 322, § 64; Laws 1980, LB 794, § 3; Laws 1981, LB 545, § 42; Laws 1986, LB 481, § 1; Laws 2015, LB598, § 24.

### **83-173.02 Use of restrictive housing; director; report.**

The director shall issue a report to the Governor and the Legislature no later than July 1, 2016. The report to the Legislature shall be issued electronically. The report shall contain a long-term plan for the use of restrictive housing with the explicit goal of reducing the use of restrictive housing.

**Source:** Laws 2015, LB598, § 30.

### **83-173.03 Use of restrictive housing; levels; department; duties.**

(1) Beginning July 1, 2016, no inmate shall be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility and pursuant to rules and regulations adopted and promulgated by the department pursuant to the Administrative Procedure Act.

(2) The department shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act establishing levels of restrictive housing as may be necessary to administer the correctional system. Rules and regulations shall establish behavior, conditions, and mental health status under which an inmate may be placed in each confinement level as well as procedures for making such determinations. Rules and regulations shall also provide for individualized transition plans, developed with the active participation of the committed offender, for each confinement level back to the general population or to society.

**Source:** Laws 2015, LB598, § 31; Laws 2016, LB867, § 1.

**Cross References**

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

**83-174.02 Dangerous sex offender; evaluation; Department of Correctional Services; duties; notice.**

(1) The Department of Correctional Services shall order an evaluation of the following individuals by a mental health professional to determine whether or not the individual is a dangerous sex offender:

(a) Individuals who have been convicted of (i) sexual assault of a child in the first degree pursuant to section 28-319.01 or (ii) sexual assault in the first degree pursuant to section 28-319;

(b) Individuals who have been convicted of two or more offenses requiring registration as a sex offender under section 29-4003 if one of the convictions was for any of the following offenses: (i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense; (ii) sexual assault in the first degree pursuant to section 28-319 or sexual assault in the second degree pursuant to section 28-320; (iii) sexual assault of a child pursuant to section 28-320.01; (iv) sexual assault of a child in the first degree pursuant to section 28-319.01; (v) sexual assault of a child in the second or third degree pursuant to section 28-320.01; (vi) sexual assault of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386; (vii) incest of a minor pursuant to section 28-703; (viii) visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03; or (ix) any offense that is substantially equivalent to an offense listed in this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described in section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Individuals convicted of a sex offense against a minor who have refused to participate in or failed to successfully complete the sex offender treatment program offered by the Department of Correctional Services or the Department of Health and Human Services during the term of incarceration. The failure to successfully complete a treatment program due to time constraints or the unavailability of treatment programming shall not constitute a refusal to participate in treatment; and

(d) Individuals convicted of failure to comply with the registration requirements of the Sex Offender Registration Act who have previously been convicted for failure to comply with the registration requirements of the act or a similar registration requirement in another state.

(2) The evaluation required by this section shall be ordered at least one hundred eighty days before the scheduled release of the individual. Upon completion of the evaluation, and not later than one hundred fifty days prior to the scheduled release of the individual, the department shall send written notice to the Attorney General, the county attorney of the county where the offender is incarcerated, and the prosecuting county attorney. The notice shall contain an affidavit of the mental health professional describing his or her findings with respect to whether or not the individual is a dangerous sex offender.

**Source:** Laws 2006, LB 1199, § 88; Laws 2016, LB934, § 32.

#### Cross References

Sex Offender Registration Act, see section 29-4001.

### **83-174.03 Certain sex offenders; supervision by Division of Parole Supervision; notice prior to release; risk assessment and evaluation; conditions of community supervision.**

(1) Any individual who, on or after July 14, 2006, (a) is convicted of or completes a term of incarceration for a registrable offense under section 29-4003 and has a previous conviction for a registrable offense under such section, (b) is convicted of sexual assault of a child in the first degree pursuant to section 28-319.01, or (c) is convicted of or completes a term of incarceration for an aggravated offense as defined in section 29-4001.01, shall, upon completion of his or her term of incarceration or release from civil commitment, be supervised in the community by the Division of Parole Supervision for the remainder of his or her life.

(2) Notice shall be provided to the division by an agency or political subdivision which has custody of an individual required to be supervised in the community pursuant to subsection (1) of this section at least sixty days prior to the release of such individual from custody.

(3) Individuals required to be supervised in the community pursuant to subsection (1) of this section shall undergo a risk assessment and evaluation by the division to determine the conditions of community supervision to be imposed to best protect the public from the risk that the individual will reoffend.

(4) Conditions of community supervision imposed on an individual by the division may include the following:

(a) Drug and alcohol testing if the conviction resulting in the imposition of community supervision involved the use of drugs or alcohol;

(b) Restrictions on employment and leisure activities necessary to minimize interaction with potential victims;

(c) Requirements to report regularly to the individual's community supervision officer;

(d) Requirements to reside at a specified location and notify the individual's community supervision officer of any change in address or employment;

(e) A requirement to allow the division access to medical records from the individual's current and former providers of treatment;

(f) A requirement that the individual submit himself or herself to available medical, psychological, psychiatric, or other treatment, including, but not limited to, polygraph examinations; or

(g) Any other conditions designed to minimize the risk of recidivism, including, but not limited to, the use of electronic monitoring, which are not unduly restrictive.

**Source:** Laws 2006, LB 1199, § 89; Laws 2009, LB285, § 13; Laws 2018, LB841, § 17.

Effective date July 19, 2018.

#### **83-174.04 Violation of condition of community supervision; actions authorized.**

An individual who violates one or more of the conditions of community supervision established for him or her pursuant to section 83-174.03 shall undergo a review by the Division of Parole Supervision to evaluate the risk posed to the public by the violation in question. The division may take any of the following actions in response to a violation of conditions of community supervision:

(1) Revise or impose additional conditions of community supervision in order to minimize the risk to the public from the continued presence of the individual in the community;

(2) Forward to the Attorney General or the county attorney in the county where the individual resides a request to initiate a criminal prosecution for failure to comply with the terms of community supervision; or

(3) Forward to the county attorney or Attorney General a recommendation that civil commitment proceedings be instituted with respect to the individual.

**Source:** Laws 2006, LB 1199, § 90; Laws 2018, LB841, § 18.

Effective date July 19, 2018.

#### **83-174.05 Violation of conditions of community supervision; penalty.**

Failure to comply with the conditions of community supervision imposed by the Division of Parole Supervision is a Class IV felony for the first offense and a Class III felony for any subsequent offense.

**Source:** Laws 2006, LB 1199, § 91; Laws 2018, LB841, § 19.

Effective date July 19, 2018.

#### **83-180 Physician or psychologist; designation; duties; transfer of person committed; jurisdiction; release; conditions; director; duties.**

(1) When a physician designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect, or when a physician or psychologist designated by the director finds that a person committed to the department is mentally ill as defined in section 71-907, the chief executive officer of the facility may order such person to be segregated from other persons in the facility in the least restrictive manner possible. If the physician or psychologist is of the opinion that the person cannot be given proper treatment in that facility, the director may arrange for his or her transfer for examination, study, and treatment to any medical-



correctional facility or to another institution in the Department of Health and Human Services where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his or her sentence, treatment in such facility is no longer necessary.

(2) When the physician or psychologist designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect or mental illness which in his or her opinion cannot be properly treated in any facility or institution in the Department of Health and Human Services, the director may arrange for his or her transfer for treatment to a hospital or psychiatric facility outside the department. The director shall make appropriate arrangements with other public or private agencies for the transportation to, and for the care, custody, and security of the person in, such hospital or psychiatric facility. While receiving treatment in such hospital or psychiatric facility, the person shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his or her sentence, such hospital or psychiatric treatment is no longer necessary.

(3) The director shall adopt and promulgate rules and regulations to establish evidence-based criteria which the department shall use to identify any person nearing release who should be evaluated to determine whether he or she is a mentally ill and dangerous person as defined in section 71-908. When two psychiatrists designated by the director find that a person about to be released or discharged from any facility is a mentally ill and dangerous person as defined in section 71-908, the director shall transfer him or her to, or if he or she has already been transferred, permit him or her to remain in, a psychiatric facility in the Department of Health and Human Services and shall promptly commence proceedings under the Nebraska Mental Health Commitment Act.

(4) The director shall adopt and promulgate rules and regulations for risk assessment and management for inmates. Such rules and regulations shall establish a structured decisionmaking process that is consistent with professional standards of care and is consistent with available risk assessment and management guidelines. The process developed shall be performed by individuals with proper training and continuing education related to relevant areas of risk assessment and management. Appropriate quality assurance and outcome assessment shall be included to ensure fidelity to the process and address relevant challenges. The rules and regulations shall establish a rational process for prioritizing who shall be screened and evaluated and when, which shall include, but not be limited to: Incidents of violent activity during incarceration; attempts of suicide or other major self-harm behaviors; and a process for staff to nominate inmates for screening based upon behavior that raises concern for community safety as release approaches.

(5) The director shall adopt and promulgate rules and regulations to ensure that all persons who are incarcerated receive a full mental health screening within the first two weeks of intake to determine whether or not an inmate is mentally ill as defined in section 71-907. Such determination shall be reflected in the inmate's individualized treatment plan and shall include adequate mental health treatment. If, at any point during his or her incarceration, an inmate is found to be mentally ill, such determination shall be reflected in the inmate's

individualized treatment plan and shall include adequate mental health treatment.

**Source:** Laws 1969, c. 817, § 11, p. 3078; Laws 1996, LB 1044, § 924; Laws 2015, LB598, § 25.

**Cross References**

Nebraska Mental Health Commitment Act, see section 71-901.

**83-182.01 Structured programming; evaluation.**

(1) Structured programming shall be planned for all adult persons committed to the department. The structured programming shall include any of the following: Work programs, vocational training, behavior management and modification, money management, and substance abuse awareness, counseling, or treatment. Programs and treatment services shall address:

- (a) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;
- (b) Drug and alcohol use and addiction;
- (c) Health and medical needs;
- (d) Education and related services;
- (e) Counseling services for persons committed to the department who have been physically or sexually abused;
- (f) Work ethic and structured work programs;
- (g) The development and enhancement of job acquisition skills and job performance skills; and
- (h) Cognitive behavioral intervention.

Structured programming may also include classes and activities organized by inmate self-betterment clubs, cultural clubs, and other inmate-led or volunteer-led groups.

(2) The goal of such structured programming is to provide the skills necessary for the person committed to the department to successfully return to his or her home or community or to a suitable alternative community upon his or her release from the adult correctional facility. The Legislature recognizes that many inmate self-betterment clubs and cultural clubs help achieve this goal by providing constructive opportunities for personal growth.

(3) If a person committed to the department refuses to participate in the structured programming described in subsection (1) of this section, he or she shall be subject to disciplinary action, except that a person committed to the department who refuses to participate in structured programming consisting of classes and activities organized by inmate self-betterment clubs, cultural clubs, or other inmate-led or volunteer-led groups shall not be subject to disciplinary action.

(4) Any person committed to the department who is qualified by reason of education, training, or experience to teach academic or vocational classes may be given the opportunity to teach such classes to committed offenders as part of the structured programming described in this section.

(5) The department shall evaluate the quality of programs funded by the department. The evaluation shall focus on whether program participation reduces recidivism. Subject to the availability of funding, the department may

contract with an independent contractor or academic institution for each program evaluation. Each program evaluation shall be standardized and shall include a site visit, interviews with key staff, interviews with offenders, group observation, if applicable, and review of materials used for the program. The evaluation shall include adherence to concepts that are linked with program effectiveness, such as program procedures, staff qualifications, and fidelity to the program model of delivering offender assessment and treatment. Each program evaluation shall also include feedback to the department concerning program strengths and weaknesses and recommendations for better adherence to evidence-based programming.

**Source:** Laws 1995, LB 371, § 29; Laws 1997, LB 364, § 18; Laws 2015, LB605, § 93.

**83-183 Persons committed; employment; wages; use; rules and regulations.**

(1) To establish good habits of work and responsibility, to foster vocational training, and to reduce the cost of operating the facilities, persons committed to the department shall be employed, eight hours per day, so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the facilities, for state use, and for other purposes authorized by law. To accomplish these purposes, the director may establish and maintain industries and farms in appropriate facilities and may enter into arrangements with any other board or agency of the state, any natural resources district, or any other political subdivision, except that any arrangements entered into with school districts, educational service units, community colleges, state colleges, or universities shall include supervision provided by the department, for the employment of persons committed to the department for state or governmental purposes. Nothing in this subsection shall be construed to effect a reduction in the number of work release positions.

(2) The director shall make rules and regulations governing the hours, the conditions of labor, and the rates of compensation of persons committed to the department. In determining the rates of compensation, such regulations may take into consideration the quantity and quality of the work performed by such person, whether or not such work was performed during regular working hours, the skill required for its performance, and the economic value of similar work outside of correctional facilities.

(3) Except as provided in section 83-183.01, wage payments to a person committed to the department shall be set aside by the chief executive officer of the facility in a separate fund. The fund shall enable such person committed to the department to contribute to the support of his or her dependents, if any, to make necessary purchases from the commissary, to set aside sums to be paid to him or her at the time of his or her release from the facility, and to pay restitution if restitution is required.

(4) The director shall adopt and promulgate rules and regulations which will protect the committed offender's rights to due process and govern the collection of restitution as provided in section 83-184.01.

(5) The director may authorize the chief executive officer to invest the earnings of a person committed to the department. Any accrued interest thereon shall be credited to such person's fund.

(6) The director may authorize the chief executive officer to reimburse the state from the wage fund of a person committed to the department for:

(a) The actual value of property belonging to the state or any other person intentionally or recklessly destroyed by such person committed to the department during his or her commitment;

(b) The actual value of the damage or loss incurred as a result of unauthorized use of property belonging to the state or any other person by such person committed to the department;

(c) The actual cost to the state for injuries or other damages caused by intentional acts of such person committed to the department; and

(d) The reasonable costs incurred in returning such person committed to the department to the facility to which he or she is committed in the event of his or her escape.

(7) No person committed to the department shall be required to engage in excessive labor, and no such person shall be required to perform any work for which he or she is declared unfit by a physician designated by the director. No person who performs labor or work pursuant to this section shall be required to wear manacles, shackles, or other restraints.

(8) The director may authorize that a portion of the earnings of a person committed to the department be retained by that person for personal use.

**Source:** Laws 1969, c. 817, § 14, p. 3080; Laws 1980, LB 319, § 10; Laws 1993, LB 31, § 32; Laws 1994, LB 889, § 1; Laws 1999, LB 865, § 7; Laws 2002, LB 112, § 1; Laws 2009, LB63, § 42; Laws 2015, LB605, § 94.

### **83-183.01 Persons committed; wages; disposition; director; adopt rules and regulations.**

A person committed to the department, who is earning at least minimum wage and is employed pursuant to sections 81-1827 and 83-183, shall have his or her wages set aside by the chief executive officer of the facility in a separate wage fund. The director shall adopt and promulgate rules and regulations which will protect the inmate's rights to due process, provide for hearing as necessary before the Crime Victim's Reparations Committee, and govern the disposition of a confined person's gross monthly wage minus required payroll deductions and payment of necessary work-related incidental expenses for the following purposes:

(1) For the support of families and dependent relatives of the respective inmates;

(2) For the discharge of any legal obligations, including judgments for restitution as provided in section 83-184.01;

(3) To pay all or a part of the cost of their board, room, clothing, medical, dental, and other correctional services;

(4) To provide for funds payable to the person committed to the department upon his or her release;

(5) For the actual value of state property intentionally or willfully and wantonly destroyed by such person during his or her commitment;

(6) For reasonable costs incurred in returning such person to the facility to which he or she is committed in the event of escape; and

(7) For deposit in the Victim's Compensation Fund.

**Source:** Laws 1980, LB 319, § 11; Laws 1986, LB 540, § 40; Laws 1987, LB 353, § 3; Laws 2015, LB605, § 95.

**83-184 Person committed; authorized employment and treatment activities; funds; disposal; withholding; use; violations; effect.**

(1) When the conduct, behavior, mental attitude, and conditions indicate that a person committed to the department and the general society of the state will be benefited, and there is reason to believe that the best interests of the people of the state and the person committed to the department will be served thereby, in that order, and upon the recommendation of the board in the case of each committed offender, the director may authorize such person, under prescribed conditions, to:

(a) Visit a specifically designated place or places and return to the same or another facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services, the contacting of prospective employers, or for any other reason consistent with the public interest;

(b) Work at paid employment or participate in a training program in the community on a voluntary basis whenever:

(i) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(ii) The rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed; or

(c) Leave the facility to participate in substance abuse evaluations or treatment, attend rehabilitative programming or treatment, seek residency or employment, or participate in structured programming as provided in section 83-182.01 and return to the same or another facility. The department shall collaborate with community-based providers to enhance the availability of community-based options for such participation that meet the department's requirements for rehabilitative programming or treatment or structured programming.

(2) The wages earned by a person authorized to work at paid employment in the community under this section shall be credited by the chief executive officer of the facility to such person's wage fund. The director shall authorize the chief executive officer to withhold up to five percent of such person's net wages. The funds withheld pursuant to this subsection shall be remitted to the State Treasurer for credit as provided in subsection (2) of section 33-157.

(3) A person authorized to work at paid employment in the community under this section may be required to pay, and the director is authorized to collect, such costs incident to the person's confinement as the director deems appropriate and reasonable. Collections shall be deposited in the state treasury as miscellaneous receipts.

(4) A person authorized to work at paid employment in the community under this section may be required to pay restitution. The director shall adopt and promulgate rules and regulations which will protect the committed offender's

rights to due process and govern the collection of restitution as provided in section 83-184.01.

(5) The willful failure of a person to remain within the extended limits of his or her confinement or to return within the time prescribed to a facility designated by the director may be deemed an escape from custody punishable as provided in section 28-912.

(6) No person employed in the community under this section or otherwise released shall, while working in such employment in the community or going to or from such employment or during the time of such release, be deemed to be an agent, employee, or servant of the state.

**Source:** Laws 1969, c. 817, § 15, p. 3081; Laws 1978, LB 748, § 46; Laws 1999, LB 106, § 1; Laws 2010, LB510, § 5; Laws 2015, LB605, § 96; Laws 2018, LB841, § 20.  
Effective date July 19, 2018.

**83-184.01 Restitution order; collection from wage funds; report.**

(1) The department, in consultation with the State Court Administrator, shall adopt and promulgate rules and regulations to provide an effective process for the transfer of funds for the purpose of satisfying restitution orders.

(2) A sentencing order requiring an inmate to pay restitution shall be treated as a court order authorizing the department to withhold and transfer funds for the purpose of satisfying a restitution order.

(3) This section applies to funds in the wage fund of any inmate confined in a correctional facility on or after August 30, 2015.

(4) The department shall report annually to the Legislature on the collection of restitution from wage funds. The report shall include the total number of inmates with restitution judgments, the total number of inmates with wage funds, the total number of inmates with both, the number of payments made to either victims or clerks of the court, the average amount of payments, and the total amount of restitution collected. The report shall be submitted electronically.

**Source:** Laws 2015, LB605, § 97.

**83-186.01 Adult correctional facilities; reentry planning program; legislative findings; Department of Correctional Services; duties.**

(1) The Legislature finds that:

(a) Research reveals that children who have parents involved in their lives perform better academically and socially in school, experience fewer mental health and substance abuse issues, and are less likely to commit serious crime;

(b) Strategies to address family stability and intergenerational poverty are specifically needed for children with incarcerated parents; and

(c) Research reveals that family-based reentry planning, including relationship development and housing and employment strategies, results in lower recidivism and greater family economic stability.

(2) The department shall implement a program for the purpose of providing in Nebraska adult correctional facilities an evidence-based program of parent education, early literacy, relationship skills development, and reentry planning involving family members of incarcerated parents prior to their release. Incar-

cerated parents of children between birth and five years of age shall have priority for participation in the program. The department may award a contract to operate the program. Such contract shall be based on competitive bids as provided in sections 73-101 to 73-105. The department shall track data related to program participation and recidivism.

**Source:** Laws 2013, LB483, § 1; Laws 2015, LB598, § 26.

**83-187 Release of person committed; procedures.**

(1) When a person committed to the department is released from a facility on parole, on post-release supervision, or upon final discharge, the person shall be returned any personal possessions taken upon confinement, and the chief executive officer of the facility shall furnish the person with a written notice as required in section 83-1,118, clothing appropriate for the season of the year, a transportation ticket to the place where he or she will reside, if within the continental limits of the United States or if not, the state may purchase transportation to the nearest United States border en route to such residence, and such sum of money as may be prescribed by the regulations of the department to enable the person to meet his or her immediate needs. If at the time of release the person is too ill or feeble or otherwise unable to use public means of transportation, the chief executive officer may make special arrangements for transportation to the place where the person will reside.

(2) At the time of release, the person shall also be paid his or her earnings and any accrued interest thereon set aside in the wage fund. Such earnings and interest shall be paid either in a lump sum or otherwise as determined by the chief executive officer to be in the best interest of the person. No less than one-third of such fund shall be paid upon release, and the entire fund shall be paid within six months of the person's release.

(3) The department shall send a copy of the release or discharge to the court which committed the person and also to the sheriff of the county in which the court is located and, when such county contains a city of the metropolitan class, to the police department of such city.

**Source:** Laws 1969, c. 817, § 18, p. 3083; Laws 1971, LB 48, § 1; Laws 1972, LB 1499, § 2; Laws 2002, LB 1054, § 27; Laws 2016, LB1094, § 34.

**83-188 Board of Parole; created; act, how construed; employees.**

(1) There is hereby created the Board of Parole. For administrative purposes only, the board shall be within the Board of Pardons. Nothing in the Nebraska Treatment and Corrections Act shall be construed to give the director or the Board of Pardons any authority, power, or responsibility over the Board of Parole, its employees, or the exercise of its functions under the provisions of the act. The employees of the Board of Parole shall be covered by the State Personnel System.

(2) Employees of the Board of Parole shall consist of the following:

(a) The administrative staff necessary to assist the board with parole reviews, revocations, and hearings;

(b) At least one legal counsel;

(c) At least one fiscal analyst, policy analyst, or data analyst; and

(d) At least one staff member to assist with the daily supervision and training of employees of the board.

**Source:** Laws 1969, c. 817, § 19, p. 3084; Laws 1972, LB 1499, § 3; Laws 1973, LB 563, § 44; Laws 1992, Third Spec. Sess., LB 13, § 1; Laws 1994, LB 677, § 2; Laws 2015, LB598, § 27.

**Cross References**

State Personnel System, see sections 81-1301 to 81-1316.

**83-191 Board of Parole; members; restriction on activities; salary.**

The members of the Board of Parole shall devote full time to their duties with such board and shall not engage in any other business or profession or hold any other public office. No member shall, at the time of his or her appointment or during his or her tenure, serve as the representative of any political party or of any executive committee or governing body thereof or as an executive officer or employee of any political party, organization, association, or committee. A member shall resign from the board upon filing as a candidate for any elective public office. Each member of the board shall receive an annual salary to be fixed by the Governor. Such salaries shall be paid in equal monthly portions.

**Source:** Laws 1969, c. 817, § 22, p. 3085; Laws 1973, LB 524, § 3; Laws 1987, LB 603, § 3; Laws 1992, Third Spec. Sess., LB 13, § 2; Laws 1994, LB 677, § 5; Laws 2018, LB841, § 21.  
Effective date July 19, 2018.

**83-192 Board of Parole; chairperson; powers; duties.**

(1) The Board of Parole shall:

(a) Determine the time of release on parole of committed offenders eligible for such release;

(b) Fix the conditions of parole, revoke parole, issue or authorize the issuance of warrants for the arrest of parole violators, and impose other sanctions short of revocation for violation of conditions of parole;

(c) Determine the time of mandatory discharge from parole;

(d) Visit and inspect any facility, state or local, for the detention of persons charged with or convicted of an offense and for the safekeeping of such other persons as may be remanded to such facility in accordance with law;

(e) Within two years after July 1, 2006, implement the utilization of a validated risk and needs assessment in coordination with the Department of Correctional Services and the Division of Parole Supervision. The assessment shall be prepared and completed by the department or the division for use by the board in determining release on parole;

(f) Review the record of every parole-eligible committed offender annually when he or she is within three years of his or her earliest parole eligibility date.

The review schedule shall be based on court-imposed sentences or statutory minimum sentences, whichever are greater. The board is not required to review the record of a committed offender when the committed offender's parole eligibility date is within one month of his or her mandatory discharge date. Nothing in such schedule shall prohibit the board from reviewing a committed offender's case at any time;



(g) Appoint and remove all employees of the board as prescribed by the State Personnel System and delegate appropriate powers and duties to them;

(h) Adopt and promulgate rules and regulations; and

(i) Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities under the Nebraska Treatment and Corrections Act.

(2) The chairperson of the board shall:

(a) Supervise the administration and operation of the board;

(b) Serve in an advisory capacity to the director in administering parole services within any facility;

(c) Interpret the parole program to the public with a view toward developing a broad base of public support;

(d) Conduct research for the purpose of evaluating and improving the effectiveness of the parole system;

(e) Recommend parole legislation to the Governor;

(f) Adopt and promulgate rules and regulations for the administration and operation of the board; and

(g) Exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(3) This section does not prohibit a committed offender from requesting that the board review his or her record, except that the board is not required to review a committed offender's record more than once a year.

**Source:** Laws 1969, c. 817, § 23, p. 3085; Laws 1979, LB 322, § 65; Laws 1981, LB 545, § 43; Laws 1986, LB 1241, § 1; Laws 1992, Third Spec. Sess., LB 13, § 3; Laws 1994, LB 677, § 6; Laws 2006, LB 1113, § 50; Laws 2018, LB841, § 22.  
Effective date July 19, 2018.

#### Cross References

State Personnel System, see sections 81-1301 to 81-1316.

### **83-192.01 Board of Parole Grant Awards Cash Fund; created; use; investment.**

The Board of Parole Grant Awards Cash Fund is created. All funds received by virtue of public grants awarded to the Board of Parole shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the board for the purposes stated in the individual grant applications and awards. 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 2018, LB841, § 23.  
Effective date July 19, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **83-198 Prohibited acts; violation; penalty.**

A person shall be guilty of a Class IV felony if he or she threatens or attempts to threaten harm to a member or an employee of the Board of Parole with the purpose to influence a decision, an opinion, a recommendation, a vote, or any other exercise of discretion as member or employee of the board or if he or she privately addresses to any member or employee of the board any representation, entreaty, argument, or other communication designed to influence the outcome of any matter which is or may come before the board on the basis of considerations other than those authorized by law.

**Source:** Laws 1969, c. 817, § 29, p. 3087; Laws 1977, LB 39, § 310; Laws 2018, LB841, § 24.  
Effective date July 19, 2018.

**83-1,100 Division of Parole Supervision; created; duties; parole officer compensation.**

(1) There is hereby created the Division of Parole Supervision within the Board of Parole. The employees of the division shall consist of the Director of Supervision and Services, the field parole service officers, and all other division staff. The division shall be responsible for the following:

(a) The administration of parole services in the community;

(b) The maintenance of all records and files associated with the Board of Parole;

(c) The daily supervision and training of staff members of the division, including training regarding evidence-based practices in supervision pursuant to section 83-1,100.02; and

(d) The assessment, evaluation, and supervision of individuals who are subject to parole supervision, including lifetime community supervision pursuant to section 83-174.03.

(2) Parole officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities, including employees of the Office of Probation Administration. This subsection shall apply only to field parole service officers and support staff and shall not apply to the Director of Supervision and Services or any other management-level position.

(3) This section does not prohibit the division from maintaining daily records and files associated with the Board of Pardons.

**Source:** Laws 1969, c. 817, § 31, p. 3088; Laws 1992, Third Spec. Sess., LB 13, § 4; Laws 1994, LB 677, § 7; Laws 2006, LB 1199, § 92; Laws 2015, LB598, § 28; Laws 2015, LB605, § 98; Laws 2018, LB841, § 25.  
Effective date July 19, 2018.

**Cross References**

**Office of Parole Administration**, contained in Department of Correctional Services, Division of Community-Centered Services, see section 83-933.

**83-1,100.01 Repealed. Laws 2015, LB 1, § 1.**

**83-1,100.02 Person on parole; levels of supervision; Division of Parole Supervision; duties.**

(1) For purposes of this section:

(a) Levels of supervision means the determination of the following for each person on parole:

- (i) Supervision contact requirements, including the frequency, location, methods, and nature of contact with the parole officer;
- (ii) Substance abuse testing requirements and frequency;
- (iii) Contact restrictions;
- (iv) Curfew restrictions;
- (v) Access to available programs and treatment, with priority given to moderate-risk and high-risk parolees; and
- (vi) Severity of graduated responses to violations of supervision conditions; and

(b) Risk and needs assessment means an actuarial tool that has been validated in Nebraska to determine the likelihood of the parolee engaging in future criminal behavior.

(2) The Division of Parole Supervision shall establish an evidence-based process that utilizes a risk and needs assessment to measure criminal risk factors and specific individual needs.

(3) The risk and needs assessment shall be performed at the commencement of the parole term and every six months thereafter by division staff trained and certified in the use of the risk and needs assessment.

(4) The validity of the risk and needs assessment shall be tested at least every five years.

(5) Based on the results of the risk and needs assessment, the division shall target parolee criminal risk and need factors by focusing sanction, program, and treatment resources on moderate-risk and high-risk parolees.

(6) The division shall provide training to its parole officers on use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, targeting criminal risk factors to reduce recidivism, and proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to section 83-1,119. All parole officers employed on August 30, 2015, shall complete the training requirements set forth in this subsection on or before January 1, 2017. Each parole officer hired on or after August 30, 2015, shall complete the training requirements set forth in this subsection within one year after his or her hire date.

(7) The division shall provide training for chief parole officers to become trainers so as to ensure long-term and self-sufficient training capacity in the state.

**Source:** Laws 2015, LB605, § 99; Laws 2016, LB1094, § 35; Laws 2018, LB841, § 26.

Effective date July 19, 2018.

**83-1,100.03 Board of Parole; rules and regulations relating to sentencing and supervision; duties; report.**

(1) The board, in consultation with the department, shall adopt and promulgate rules and regulations to reduce the number of inmates under the custody of the department who serve their entire sentence in a correctional facility and are released without supervision. The rules and regulations shall establish clear guidelines and procedures to ensure that each parolee is subject to a minimum of nine months of supervision and shall place priority on providing supervision

lengths that enable meaningful transition periods for all offenders. The rules and regulations shall ensure that each inmate eligible for parole is assessed for risk of reoffending using a validated risk and needs assessment provided by the department and shall incorporate into the release decision an inmate's assessed risk of reoffending, past criminal history, program completion, institutional conduct, and other individual characteristics related to the likelihood of reoffending into parole release decisions.

(2) By February 1, 2016, and by February 1 of each year thereafter, the board and the department shall submit a report to the Legislature, the Supreme Court, and the Governor that describes the percentage of offenders sentenced to the custody of the department who complete their entire sentence and are released with no supervision. The report shall document characteristics of the individuals released without supervision, including the highest felony class of conviction, offense type of conviction, most recent risk assessment, status of the individualized release or reentry plan, and reasons for the release without supervision. The report also shall provide recommendations from the department and board for changes to policy and practice to meet the goal of achieving a reduction in the number of inmates under the custody of the department who serve their entire sentence in a correctional facility and are released without supervision. The report to the Legislature shall be submitted electronically.

**Source:** Laws 2015, LB605, § 100.

### **83-1,101 Director of Supervision and Services; appointment; qualifications.**

The Board of Parole shall appoint a Director of Supervision and Services who shall be a person with appropriate experience and training, including, but not limited to, familiarity with the implementation of evidence-based processes for utilizing risk and needs assessments to measure criminal risk factors and specific individual needs.

**Source:** Laws 1969, c. 817, § 32, p. 3088; Laws 1972, LB 1499, § 4; Laws 2016, LB1094, § 36; Laws 2018, LB841, § 27.  
Effective date July 19, 2018.

### **83-1,102 Director of Supervision and Services; duties.**

The Director of Supervision and Services shall:

- (1) Supervise and administer the Division of Parole Supervision;
- (2) Establish and maintain policies, standards, and procedures for the field parole service and the community supervision of sex offenders pursuant to section 83-174.03;
- (3) Divide the state into parole districts and appoint district parole officers and such other employees as may be required to carry out adequate parole supervision of all parolees, prescribe their powers and duties, and obtain division offices for staff in each district as may be necessary;
- (4) Cooperate with the Board of Parole, the courts, the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice, and all other agencies, public and private, which are concerned with the treatment or welfare of persons on parole;
- (5) Provide the Board of Parole and district judges with any record of a parolee which the board or such judges may require;

(6) Make recommendations to the Board of Parole or district judge in cases of violation of the conditions of parole, issue warrants for the arrest of parole violators when so instructed by the board or district judge, notify the Director of Correctional Services of determinations made by the board, and upon instruction of the board, issue certificates of parole and of parole revocation to the facilities and certificates of discharge from parole to parolees;

(7) Organize and conduct training programs for the district parole officers and other employees;

(8) Use the funds provided under section 83-1,107.02 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole-based programs and purchase services to provide such programs aimed at enhancing adult parolee supervision in the community and treatment needs of parolees. Such enhanced parole-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs that address a parolee's vocational, educational, mental health, behavioral, or substance abuse treatment needs, including evidence-based peer and family support programs;

(9) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated;

(10) Report annually to the Governor and electronically to the Clerk of the Legislature beginning January 1, 2015, the number of parole revocations and the number of technical violations of parole; and

(11) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 817, § 33, p. 3088; Laws 1971, LB 680, § 28; Laws 2003, LB 46, § 19; Laws 2005, LB 538, § 23; Laws 2006, LB 1199, § 93; Laws 2011, LB390, § 25; Laws 2014, LB907, § 15; Laws 2018, LB841, § 28.  
Effective date July 19, 2018.

**Cross References**

**Definitions applicable,** see section 29-2246.

**83-1,103 Field parole service; duties.**

The field parole service, consisting of district parole officers working under the direction of the Director of Supervision and Services or district judge, shall be responsible for the investigation, supervision, and assistance of parolees, probationers, or individuals subject to community supervision under section 83-174.03. The field parole service shall be sufficient in size to assure that no district parole officer carries a case load larger than is compatible with adequate parole investigation or supervision.

**Source:** Laws 1969, c. 817, § 34, p. 3089; Laws 1971, LB 680, § 29; Laws 2006, LB 1199, § 94; Laws 2018, LB841, § 29.  
Effective date July 19, 2018.

**Cross References**

**Definitions applicable,** see section 29-2246.

**83-1,103.01 Lifetime community supervision; parole officer; duties.**

A parole officer assigned by the Director of Supervision and Services to supervise individuals subject to lifetime community supervision pursuant to section 83-174.03 shall:

(1) Make investigations, prior to an individual subject to community supervision being released from incarceration, in cooperation with institutional case-workers at prisons, mental health facilities, and county jails, to determine the community supervision conditions necessary to protect the public and make reasonable advance preparation for release into the community;

(2) Assist individuals subject to community supervision to comply with the conditions of supervision and to make a successful adjustment in the community;

(3) Supervise individuals subject to community supervision by keeping informed of their conduct and condition;

(4) Make reports as required by the Director of Supervision and Services to determine the effectiveness of community supervision in protecting the public or the progress of an individual subject to community supervision;

(5) Cooperate with social welfare agencies and treatment providers to ensure that individuals subject to community supervision receive any necessary services or treatment;

(6) Inform the Director of Supervision and Services when, in the opinion of the community supervision officer, an individual is in violation of the conditions of his or her community supervision, and whenever necessary exercise the power of arrest as provided in section 83-1,102;

(7) Conduct periodic reviews of the conditions of community supervision imposed on an individual as required by the Director of Supervision and Services; and

(8) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 2006, LB 1199, § 95; Laws 2018, LB841, § 30.  
Effective date July 19, 2018.

**83-1,103.02 Lifetime community supervision; Division of Parole Supervision; duties; certificate of community supervision; appeal.**

(1) Prior to the release from incarceration of an individual subject to lifetime community supervision pursuant to section 83-174.03, the Division of Parole Supervision shall:

(a) Notify the individual in writing that he or she is subject to community supervision upon completion of his or her criminal sentence;

(b) Inform the individual subject to community supervision of the process by which conditions of community supervision are determined and his or her right to submit relevant information to the division for consideration when establishing the conditions of supervision;

(c) Determine the individual's risk of recidivism if released into the community, utilizing a validated risk assessment tool;

(d) After considering the information required in subdivision (e) of this subsection, determine the conditions of supervision which will most effectively minimize the risk of the individual committing another sex offense. The conditions shall be the least restrictive conditions available, in terms of the effect on

the individual's personal freedom, which minimize the risk of recidivism and are compatible with public safety; and

(e) In determining the conditions of supervision to be imposed, the division shall consider the following:

(i) A report prepared by the institutional caseworkers relating to the individual's personality, social history, and adjustment to authority and including any recommendations which the staff of the facility may make;

(ii) All official reports of the individual's prior criminal record, including reports and records of earlier probation and parole experiences;

(iii) The presentence investigation report;

(iv) The reports of any physical, mental, and psychiatric examinations of the individual;

(v) Any relevant information which may be submitted by the individual, his or her attorney, the victim of the crime, or other persons; and

(vi) Such other relevant information concerning the individual as may be reasonably available.

(2) Upon completion of the risk assessment and the determination of the conditions of community supervision and no later than thirty days prior to the completion of the individual's criminal sentence, the division shall issue a certificate of community supervision to the individual containing the conditions of community supervision he or she will be required to comply with upon the completion of his or her criminal sentence. The Director of Supervision and Services shall include with the certificate written information on how to appeal the determination of the conditions of community supervision.

**Source:** Laws 2006, LB 1199, § 96; Laws 2018, LB841, § 31.  
Effective date July 19, 2018.

**83-1,103.03 Lifetime community supervision; Division of Parole Supervision; annual review.**

The Division of Parole Supervision shall review the conditions of community supervision imposed on an individual pursuant to section 83-174.03 on an annual basis and shall provide the individual the opportunity to submit written materials to the division for consideration during such review.

If the division determines, after reviewing the individual's conduct while under supervision and any other relevant facts, that one or more of the conditions of community supervision imposed upon the individual is no longer necessary to reduce the risk of the individual reoffending or is no longer the least restrictive condition compatible with public safety, the division shall revise the conditions of community supervision so that the individual's freedom is not unnecessarily restricted.

**Source:** Laws 2006, LB 1199, § 97; Laws 2018, LB841, § 32.  
Effective date July 19, 2018.

**83-1,103.04 Lifetime community supervision; determination or revision of conditions; appeal; burden of proof.**

(1) Whenever a determination or revision of the conditions of community supervision is made by the Division of Parole Supervision, the individual subject to the conditions shall be entitled to an appeal. The appeal shall be

heard by the district court in the county where the individual resides. The individual shall be informed of his or her right to request counsel, and if counsel is requested the court shall determine if the individual is indigent. If the court finds the individual to be indigent, it shall appoint counsel from the public defender's office to represent the individual during the appeal.

(2) In an appeal contesting the determination or revision of the conditions of community supervision, the burden of proof shall be on the individual subject to community supervision to show by clear and convincing evidence (a) that the conditions in question will not reduce the risk of the individual reoffending or otherwise protect the public or (b) that the condition is overly restrictive of the individual's freedom and a less restrictive condition is available which is equally or more effective in reducing the risk of the individual reoffending.

**Source:** Laws 2006, LB 1199, § 98; Laws 2018, LB841, § 33.  
Effective date July 19, 2018.

### **83-1,104 District parole officer; duties.**

A district parole officer shall:

(1) Make investigations, prior to a committed offender's release on parole, in cooperation with institutional caseworkers and the Board of Parole to determine the adequacy of parole plans and make reasonable advance preparation for release on parole;

(2) Assist a committed offender who requests assistance prior to release or a parolee to comply with the conditions of parole and to make a successful adjustment in the community, including facilitating the transitional needs of housing and employment, access to and participation in job training services in the community, access to mental health services, assisting with applications for health care coverage or ensuring that the committed offender or parolee knows how to apply for and obtain health care coverage, and assisting with enrollment in the medical assistance program established pursuant to the Medical Assistance Act, if eligible, to ensure that the committed offender or parolee has access to such program close to the time of release or soon thereafter;

(3) Supervise parolees by keeping informed of their conduct and condition, utilizing global positioning systems and other monitoring technology as needed during the period of supervision;

(4) Make such reports as required by the Director of Supervision and Services or district judge to determine the effectiveness of the parole system or the progress of an individual parolee;

(5) Cooperate with social welfare agencies;

(6) Observe the work of any parole officer under his or her supervision from time to time;

(7) Inform the Director of Supervision and Services when, in his or her opinion, any eligible parolee's conduct and attitude warrant his or her discharge from active supervision, or when any parolee's violation of the conditions of parole is of sufficient seriousness to require action by the Board of Parole or district judge and whenever necessary exercise the power of arrest as provided in section 83-1,119;

(8) Delegate in his or her discretion any of the above responsibilities to a parole officer under his or her supervision; and



(9) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**Source:** Laws 1969, c. 817, § 35, p. 3089; Laws 1971, LB 680, § 30; Laws 2014, LB907, § 16; Laws 2018, LB841, § 34.

Effective date July 19, 2018.

**Cross References**

**Definitions applicable,** see section 29-2246.

**Medical Assistance Act,** see section 68-901.

**83-1,105.01 Repealed. Laws 2015, LB 268, § 35; Laws 2015, LB 605, § 112; Referendum 2016, No. 426.**

**Note:** Section 83-1,105.01 was repealed by Laws 2015, LB 268, section 35, and Laws 2015, LB 605, section 112. Although the repeal of section 83-1,105.01 by Laws 2015, LB 268, was not effective because of the vote on the referendum at the November 2016 general election, section 83-1,105.01 remains repealed as a result of Laws 2015, LB 605, section 112.

**83-1,107 Reductions of sentence; personalized program plan; how credited; forfeiture; withholding; restoration; release or reentry plan; treatment programming; individualized post-release supervision plan.**

(1)(a) Within sixty days after initial classification and assignment of any offender committed to the department, all available information regarding such committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be developed with the active participation of the committed offender. The department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

(i) Academic and vocational education, including teaching such classes by qualified offenders;

(ii) Substance abuse treatment;

(iii) Mental health and psychiatric treatment, including criminal personality programming;

(iv) Constructive, meaningful work programs; and

(v) Any other program deemed necessary and appropriate by the department.

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. The department may not impose disciplinary action upon any committed offender solely because of the committed offender's failure to comply with the department-approved personalized program plan, but such failure may be considered by the board in its deliberations on whether or not to grant parole to a committed offender.

(2)(a) The department shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.

(b) In addition to reductions granted in subdivision (2)(a) of this section, the department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the department during which the offender has not been found guilty of (i) a Class I or Class II offense or (ii) more than three Class III offenses under the department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.

(c) The total reductions under this subsection shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been notified regarding the charges of misconduct.

(4) The department shall ensure that a release or reentry plan is complete or near completion when the offender has served at least eighty percent of his or her sentence. For purposes of this subsection, release or reentry plan means a comprehensive and individualized strategic plan to ensure an individual's safe and effective transition or reentry into the community to which he or she resides with the primary goal of reducing recidivism. At a minimum, the release or reentry plan shall include, but not be limited to, consideration of the individual's housing needs, medical or mental health care needs, and transportation and job needs and shall address an individual's barriers to successful release or reentry in order to prevent recidivism. The release or reentry plan does not include an individual's programming needs included in the individual's personalized program plan for use inside the prison.

(5)(a) The department shall make treatment programming available to committed offenders as provided in section 83-1,110.01 and shall include continuing participation in such programming as part of each offender's parolee personalized program plan.

(b) Any committed offender with a mental illness shall be provided with the community standard of mental health care. The mental health care shall utilize evidence-based therapy models that include an evaluation component to track the effectiveness of interventions.

(c) Any committed offender with a mental illness shall be evaluated before release to ensure that adequate monitoring and treatment of the committed offender will take place or, if appropriate, that a commitment proceeding under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act will take place.

(6)(a) Within thirty days after any committed offender has been paroled, all available information regarding such parolee shall be reviewed and a case plan document shall be drawn up and approved by the Division of Parole Supervision. The document shall specifically describe the approved case plan and the specific goals the division expects the parolee to achieve. The document shall also contain a realistic schedule for completion of the approved case plan. The approved case plan shall be developed with the active participation of the parolee. During the term of parole, the parolee shall comply with the approved

case plan and the division shall provide programs to allow compliance by the parolee with the approved case plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs;
- (v) Community service programs; and
- (vi) Any other program deemed necessary and appropriate by the division.

(b) A modification in the approved case plan may be made to account for the increased or decreased abilities of the parolee or the availability of any program. Any modification shall be made only after notice is given to the parolee. Intentional failure to comply with the approved case plan by any parolee as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the division resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(7) While the offender is in the custody of the board, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the director upon the recommendation of the board after the offender has been notified regarding the charges of misconduct or breach of the conditions of parole.

(8) Good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

(9) Pursuant to rules and regulations adopted by the probation administrator and the director, an individualized post-release supervision plan shall be collaboratively prepared by the Office of Probation Administration and the department and provided to the court to prepare individuals under custody of the department for post-release supervision. All records created during the period of incarceration shall be shared with the Office of Probation Administration and considered in preparation of the post-release supervision plan.

**Source:** Laws 1969, c. 817, § 38, p. 3092; Laws 1972, LB 1499, § 7; Laws 1975, LB 567, § 2; Laws 1992, LB 816, § 2; Laws 1995, LB 371, § 20; Laws 1997, LB 364, § 19; Laws 2003, LB 46, § 20; Laws 2011, LB191, § 1; Laws 2014, LB907, § 17; Laws 2015, LB598, § 29; Laws 2015, LB605, § 101; Laws 2018, LB841, § 35.  
Effective date July 19, 2018.

#### Cross References

**Nebraska Mental Health Commitment Act**, see section 71-901.

**Sex Offender Commitment Act**, see section 71-1201.

### **83-1,107.01 Fees; waiver; when; failure to pay; effect.**

(1) Unless otherwise provided by this section, whenever an adult offender is paroled, the board shall require a parolee to pay a monthly parole programming fee.

(2) Parolees under the supervision of the Division of Parole Supervision shall pay a monthly parole programming fee of twenty-five dollars, not later than the

tenth day of each month, beginning the second month of parole supervision and continuing for the duration of the parole.

(3) The board shall waive payment of the monthly parole programming fee in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the parolee due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that the parolee is unable to pay his or her monthly parole programming fee.

(4) When monthly parole programming fees are waived, in whole or in part, the parole officer, pursuant to rules and regulations adopted by the board, may contract with the parolee to perform approved community service at the rate of five dollars per hour in lieu of payment of monthly parole programming fees. A parolee may be required to pay a participation fee in order to take advantage of community service programs. A parolee may not accumulate more than three months' advance credit for community service. The use of community service alternatives does not preclude the imposition of other intermediate measures.

(5) The division with the approval of the Board of Parole shall implement sanctions if a parolee defaults in the payment of monthly parole programming fees or any installment thereof as established by subsection (2) of this section, except that parole shall not be revoked nor shall the parolee be imprisoned for such nonpayment if the parolee is financially unable to make the payment.

(6) If the board determines that the default in payment described in subsection (5) of this section was not attributable to a deliberate refusal to obey the order of the board or to failure on the parolee's part to make a good faith effort to obtain the funds required for payment, the board may allow the parolee additional time for payment, reduce the amount of each installment, or revoke the fees or the unpaid portion in whole or in part.

(7) No parolee shall be required to pay more than one monthly parole programming fee per month.

(8) The imposition of monthly parole programming fees in this section shall be considered separate and apart from specific service delivery fees.

(9) Any adult offender received for supervision pursuant to section 29-2637 or the Interstate Compact for Adult Offender Supervision shall be assessed a monthly parole programming fee during the period of time the offender is actively supervised by Nebraska parole authorities.

(10) A parolee shall pay the fees described in this section to the division. The division shall remit all fees to the State Treasurer for credit to the Parole Program Cash Fund.

(11) The board and the division shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2003, LB 46, § 21; Laws 2018, LB841, § 36.  
Effective date July 19, 2018.

#### Cross References

Interstate Compact for Adult Offender Supervision, see sections 29-2639 and 29-2640.

### **83-1,107.02 Parole Program Cash Fund; created; use; investment.**

The Parole Program Cash Fund is created. All funds collected pursuant to section 83-1,107.01 shall be remitted to the State Treasurer for credit to the

fund. The fund shall be utilized by the Division of Parole Supervision for the purposes stated in subdivision (8) of section 83-1,102. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2003, LB 46, § 22; Laws 2011, LB390, § 26; Laws 2018, LB841, § 37.  
Effective date July 19, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **83-1,109 Chief executive officer; good time; report; Director of Correctional Services; duties.**

The chief executive officer of a facility shall regularly report all good time and all forfeitures, withholdings, and restorations of good time to the director. On the basis of such report, the director shall inform the board and the Director of Supervision and Services of all committed offenders who are expected to become eligible for release on parole within the next three months.

**Source:** Laws 1969, c. 817, § 40, p. 3093; Laws 1975, LB 567, § 5; Laws 1992, LB 816, § 4; Laws 2018, LB841, § 38.  
Effective date July 19, 2018.

### **83-1,110.02 Medical parole; eligibility; conditions; term.**

(1) A committed offender who is not under sentence of death or of life imprisonment and who because of an existing medical or physical condition is determined by the department to be terminally ill or permanently incapacitated may be considered for medical parole by the board. A committed offender may be eligible for medical parole in addition to any other parole. The department shall identify committed offenders who may be eligible for medical parole based upon their medical records.

(2) The board shall decide to grant medical parole only after a review of the medical, institutional, and criminal records of the committed offender and such additional medical evidence from board-ordered examinations or investigations as the board in its discretion determines to be necessary. The decision to grant medical parole and to establish conditions of release on medical parole in addition to the conditions stated in subsection (3) of this section is within the sole discretion of the board.

(3) As conditions of release on medical parole, the board shall require that the committed offender agree to placement for medical treatment and that he or she be placed for a definite or indefinite period of time in a hospital, a hospice, or another housing accommodation suitable to his or her medical condition, including, but not limited to, his or her family's home, as specified by the board.

(4) The parole term of a medical parolee shall be for the remainder of his or her sentence as reduced by any adjustment for good conduct pursuant to the Nebraska Treatment and Corrections Act.

**Source:** Laws 2005, LB 538, § 25; Laws 2015, LB268, § 32; Referendum 2016, No. 426; Laws 2018, LB841, § 39.  
Effective date July 19, 2018.

**Note:** The changes made to section 83-1,110.02 by Laws 2015, LB 268, section 32, have been omitted because of the vote on the referendum at the November 2016 general election.

**83-1,111 Committed offender; eligible for parole; release on parole; review procedures; release date set; case deferred; reconsideration.**

(1) A committed offender serving an indeterminate sentence under which he or she may become eligible for parole shall be interviewed and have his or her record reviewed by two or more members of the Board of Parole or a person designated by the board within sixty days before the expiration of his or her minimum term less any reductions as provided in section 83-1,110. If, in the opinion of the reviewers, the review indicates the offender is reasonably likely to be granted parole and has a potential parole term of no less than one month, the Board of Parole shall schedule a public hearing before a majority of its members. At such hearing the offender may present evidence, call witnesses, and be represented by counsel. If, in the opinion of the reviewers, the review indicates the offender should be denied parole, the offender may request an additional review by a majority of the members of the board. A review by the majority of the members of the board may be conducted not more than once annually. Any hearing and review shall be conducted in an informal manner, but a complete record of the proceedings shall be made and preserved.

(2) The board shall render its decision regarding the committed offender's release on parole within a reasonable time after the hearing or review. The decision shall be by majority vote of the board. The decision shall be based on the entire record before the board which shall include the opinion of the person who conducted the review. If the board denies parole, written notification listing the reasons for such denial and the recommendations for correcting deficiencies which cause the denial shall be given to the committed offender within thirty days following the hearing.

(3) If the board fixes the release date, such date shall be not more than six months from the date of the committed offender's parole hearing or from the date of last reconsideration of his or her case, unless there are special reasons for fixing a later release date.

(4) If the board defers the case for later reconsideration, the committed offender shall be afforded a parole review at least once a year until a release date is fixed. The board may order a reconsideration or a rehearing of the case at any time.

(5) The release of a committed offender on parole shall not be upon the application of the offender but by the initiative of the Board of Parole. No application for release on parole made by a committed offender or on his or her behalf shall be entertained by the board. This subsection does not prohibit the Director of Correctional Services from recommending to the board that it consider an individual offender for release on parole.

**Source:** Laws 1969, c. 817, § 42, p. 3093; Laws 1972, LB 1499, § 10; Laws 1973, LB 524, § 4; Laws 1975, LB 567, § 7; Laws 1986, LB 1242, § 1; Laws 2003, LB 46, § 24; Laws 2018, LB841, § 40. Effective date July 19, 2018.

**83-1,112 Committed offender; eligible for parole; parole plan of offender.**

(1) Each committed offender eligible for parole shall, in advance of his or her parole hearing, have a parole plan in accordance with the rules of the Board of

Parole. Whenever the board determines that it will facilitate the parole hearing, it may furnish the offender with any information and records to be considered by it at the hearing.

(2) An offender shall be permitted to advise with any person whose assistance he or she desires, including his or her own legal counsel, in preparing for a hearing before the Board of Parole.

**Source:** Laws 1969, c. 817, § 43, p. 3095; Laws 2018, LB841, § 41.  
Effective date July 19, 2018.

**83-1,112.01 Person convicted of multiple violations of driving under influence of alcoholic liquor or drugs; parole eligibility.**

The board shall require any person who is incarcerated pursuant to subdivision (9) or (10) of section 60-6,197.03 to complete all diagnostic evaluations provided by the department and all programming required by the department prior to being considered eligible for parole. If the programming required by the department cannot be completed during the person's period of incarceration but can be provided in the community, and the board in its discretion believes the incarcerated person will participate in programming available in the community, the board may waive the programming requirement of this section and, as a condition of parole, require that such programming be completed by the person during his or her parole term.

**Source:** Laws 2011, LB675, § 12; Laws 2018, LB841, § 42.  
Effective date July 19, 2018.

**83-1,114 Board; deferment of parole; grounds.**

(1) Whenever the board considers the release of a committed offender who is eligible for release on parole, it shall order his or her release unless it is of the opinion that his or her release should be deferred because:

(a) There is a substantial risk that he or she will not conform to the conditions of parole;

(b) His or her release would depreciate the seriousness of his or her crime or promote disrespect for law;

(c) His or her release would have a substantially adverse effect on institutional discipline; or

(d) His or her continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his or her capacity to lead a law-abiding life when released at a later date.

(2) In making its determination regarding a committed offender's release on parole, the board shall give consideration to its decision guidelines as set forth in its rules and regulations and shall take into account each of the following factors:

(a) The offender's personality, including his or her maturity, stability, and sense of responsibility and any apparent development in his or her personality which may promote or hinder his or her conformity to law;

(b) The adequacy of the offender's parole plan;

(c) The offender's ability and readiness to assume obligations and undertake responsibilities;

(d) The offender's intelligence and training;

(e) The offender's family status and whether he or she has relatives who display an interest in him or her or whether he or she has other close and constructive associations in the community;

(f) The offender's employment history, his or her occupational skills, and the stability of his or her past employment;

(g) The type of residence, neighborhood, or community in which the offender plans to live;

(h) The offender's past use of narcotics or past habitual and excessive use of alcohol;

(i) The offender's mental or physical makeup, including any disability or handicap which may affect his or her conformity to law;

(j) The offender's prior criminal record, including the nature and circumstances, dates, and frequency of previous offenses;

(k) The offender's attitude toward law and authority;

(l) The offender's conduct in the facility, including particularly whether he or she has taken advantage of the opportunities for self-improvement, whether he or she has been punished for misconduct within six months prior to his or her hearing or reconsideration for parole release, whether any reductions of term have been forfeited, and whether such reductions have been restored at the time of hearing or reconsideration;

(m) The offender's behavior and attitude during any previous experience of probation or parole and how recent such experience is;

(n) The risk and needs assessment completed pursuant to section 83-192; and

(o) Any other factors the board determines to be relevant.

**Source:** Laws 1969, c. 817, § 45, p. 3095; Laws 2006, LB 1113, § 51; Laws 2018, LB841, § 43.  
Effective date July 19, 2018.

**83-1,118 Board; parolee; discharge from parole; when; department; discharge from custody; notice of civil rights.**

(1) If, in the opinion of the board, upon receipt of information from the Director of Supervision and Services, a parolee has shown suitable compliance with his or her parole programming plan, the board may reduce the level of supervision for a parolee that is commensurate with the best interests of the parolee and is compatible with the protection of the public.

(2) The board shall discharge a parolee from parole when the time served in the custody of the department and the time served on parole equal the maximum term less good time.

(3) The department shall discharge a committed offender from the custody of the department when the time served in the facility equals the maximum term less good time.

(4) Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are restored two years after completion of the sentence. The notice shall also include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.



(5) The Board of Parole may discharge a parolee from parole when such parolee is under the supervision of another state's correctional institution and such offender has reached the expiration date of his or her Nebraska parole term.

**Source:** Laws 1969, c. 817, § 49, p. 3098; Laws 1975, LB 567, § 8; Laws 1992, LB 816, § 6; Laws 1994, LB 677, § 10; Laws 2002, LB 1054, § 28; Laws 2003, LB 46, § 25; Laws 2005, LB 53, § 7; Laws 2018, LB841, § 44.  
Effective date July 19, 2018.

**83-1,119 Parolee; violation of parole; parole officer; administrative sanction; report to Board of Parole; action of board.**

(1) For purposes of this section:

(a) Absconding parole supervision means a parolee has purposely avoided supervision for a period of at least two weeks and reasonable efforts by a parole officer and staff to locate the parolee in person have proven unsuccessful;

(b) Administrative sanction means additional parole requirements imposed upon a parolee by his or her parole officer, with the full knowledge and consent of the parolee, designed to hold the parolee accountable for substance abuse or technical violations of conditions of parole, including, but not limited to:

(i) Counseling or reprimand by the Division of Parole Supervision;

(ii) Increased supervision contact requirements;

(iii) Increased substance abuse testing;

(iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;

(v) Imposition of a designated curfew for a period to be determined by the division; and

(vi) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the division;

(c) Contract facility means a county jail that contracts with the department to house parolees or other offenders under the jurisdiction of the department;

(d) Substance abuse violation means a parolee's activities or behaviors associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of parole, including:

(i) Positive breath test for the consumption of alcohol if the parolee is required to refrain from alcohol consumption;

(ii) Positive urinalysis for the illegal use of drugs;

(iii) Failure to report for alcohol testing or drug testing; and

(iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment; and

(e) Technical violation means a parolee's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of parole supervision resulting in a violation of an original condition of parole and includes:

(i) Moving traffic violations;

(ii) Failure to report to his or her parole officer;

(iii) Leaving the state without the permission of the Board of Parole;

- (iv) Failure to work regularly or attend training or school;
- (v) Failure to notify his or her parole officer of change of address or employment;
- (vi) Frequenting places where controlled substances are illegally sold, used, distributed, or administered; and
- (vii) Failure to pay fines, court costs, restitution, or any fees imposed pursuant to section 83-1,107.01 as directed.

Technical violation does not include absconding parole supervision.

(2) The division shall develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. A custodial sanction of thirty days in a correctional facility or a contract facility shall be designated as the most severe response to a violation in lieu of revocation.

(3) Whenever a parole officer has reasonable cause to believe that a parolee has committed or is about to commit a substance abuse violation or technical violation while on parole, but that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall either:

(a) Impose one or more administrative sanctions based upon the parolee's risk level, the severity of the violation, and the parolee's response to the violation. If administrative sanctions are to be imposed, the parolee shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. The parolee has the right to decline to acknowledge the violation. If he or she declines to acknowledge the violation, the parole officer shall take action pursuant to subdivision (3)(b) of this section. A copy of the report shall be submitted to the Board of Parole; or

(b) Submit a written report to the Board of Parole, outlining the nature of the parole violation, and request the imposition of a custodial sanction of up to thirty days in a correctional facility or a contract facility. On the basis of the report and such further investigation as the board may deem appropriate, the board shall determine whether and how the parolee violated the conditions of parole and may:

(i) Dismiss the charge of violation; or

(ii) If the board finds a violation justifying a custodial sanction, issue a warrant if necessary and impose a custodial sanction of up to thirty days in a correctional facility or a contract facility.

(4) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole by a violation other than a substance abuse violation or a technical violation and the parole officer has reasonable cause to believe that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall submit a written report to the Board of Parole which may, on the basis of such report and such further investigation as it may deem appropriate:

(a) Dismiss the charge of violation;

(b) Determine whether the parolee violated the conditions of his or her parole;

(c) Impose a custodial sanction of up to thirty days in a correctional facility or a contract facility;

(d) Revoke his or her parole in accordance with the Nebraska Treatment and Corrections Act; or

(e) Issue a warrant for the arrest of the parolee.

(5) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole and that the parolee will attempt to leave the jurisdiction or will place lives or property in danger, the parole officer shall arrest the parolee without a warrant and call on any peace officer to assist him or her in doing so.

(6) Whenever a parolee is arrested with or without a warrant, he or she shall be detained in a local jail or other detention facility operated by the Department of Correctional Services pending completion of review of parole proceedings by the Board of Parole. Immediately after such arrest and detention, the parole officer shall notify the Board of Parole and submit a written report of the reason for such arrest. A complete investigation shall be made by the Division of Parole Supervision and submitted to the board. After prompt consideration of such written report, the board shall order the parolee's release from detention or continued confinement to await a final decision on imposition of a custodial sanction or the revocation of parole.

(7) The Board of Parole shall adopt and promulgate rules and regulations necessary to carry out this section.

**Source:** Laws 1969, c. 817, § 50, p. 3099; Laws 1973, LB 524, § 5; Laws 1997, LB 396, § 25; Laws 2014, LB907, § 18; Laws 2015, LB605, § 102; Laws 2016, LB1094, § 37; Laws 2018, LB841, § 45.  
Effective date July 19, 2018.

### **83-1,120 Parolee; violation of parole; hearing.**

Whenever a parolee is charged with a violation of parole, he or she shall be entitled to a prompt hearing on such charge by the Board of Parole, which hearing in no event shall occur more than thirty days after receipt of the parole officer's written report. At such hearing, the parolee shall be permitted to be present, to testify, to produce witnesses, to cross-examine adverse witnesses, and to introduce such other evidence as may be pertinent. The parolee shall be informed of his or her right to request counsel at such hearing, and if the parolee thereafter makes such request, based on a timely and colorable claim (1) that he or she has not committed the alleged violation of the conditions upon which he or she is at liberty, or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present, and upon consideration of whether or not the parolee appears to be capable of speaking effectively for himself or herself, the board in the exercise of sound discretion may provide counsel unless retained counsel is available to the parolee. In every case in which a request for counsel is refused, the grounds for refusal shall be stated in the record.

**Source:** Laws 1969, c. 817, § 51, p. 3099; Laws 1972, LB 1499, § 11; Laws 1973, LB 524, § 6; Laws 2018, LB841, § 46.  
Effective date July 19, 2018.

**83-1,121 Parolee; legal custody of Board of Parole; action of board.**

A committed offender while on parole shall remain in the legal custody and control of the Board of Parole. The board may at any time revoke the parole of an offender or recommit him or her to the custody of the Department of Correctional Services, with or without cause.

**Source:** Laws 1969, c. 817, § 52, p. 3100; Laws 2018, LB841, § 47.  
Effective date July 19, 2018.

**83-1,122 Parolee; violation of parole; action of Board of Parole.**

(1) If the board finds that the parolee has engaged in criminal conduct, the board may order revocation of the parolee's parole.

(2) If the board finds that the parolee did violate a condition of parole but is of the opinion that revocation of parole is not appropriate, the board may order that:

- (a) The parolee receive a reprimand and warning;
- (b) Parole supervision and reporting be intensified;
- (c) Good time granted pursuant to section 83-1,108 be forfeited or withheld;
- (d) The parolee serve a custodial sanction of up to thirty days in a correctional facility or a contract facility as defined in section 83-1,119; or
- (e) The parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance with the Nebraska Treatment and Corrections Act.

(3) Cumulative custodial sanctions in a correctional facility or a contract facility under this section and section 83-1,119 shall not exceed sixty days. If a parolee has previously received sixty days of cumulative custodial sanctions before the current violation, the board shall either order revocation of the parolee's parole or one or more of the other sanctions described in subsection (2) of this section.

(4) Time spent in custodial sanctions under this section and section 83-1,119 shall be credited to the parolee's sentence.

**Source:** Laws 1969, c. 817, § 53, p. 3100; Laws 1992, LB 816, § 7; Laws 1995, LB 371, § 23; Laws 2015, LB605, § 103; Laws 2016, LB1094, § 38.

**83-1,122.01 Board of Parole; jurisdiction.**

(1) Except as provided in subsection (3) of this section, the board does not have jurisdiction over a person who is committed to the department in accordance with section 29-2204.02 for a Class III, IIIA, or IV felony committed on or after August 30, 2015, unless the person is also committed to the department in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.

(2) Except as provided in subsection (3) of this section, the board does not have jurisdiction over a person committed to the department for a misdemeanor sentence imposed consecutively or concurrently with a Class III, IIIA, or IV felony sentence for an offense committed on or after August 30, 2015, unless the person is also committed to the department in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony

committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.

(3) This section does not apply to medical parole under section 83-1,110.02.

**Source:** Laws 2015, LB605, § 104; Laws 2016, LB1094, § 40; Laws 2018, LB841, § 48.

Effective date July 19, 2018.

**83-1,124 Repealed. Laws 2018, LB841, § 58.**

**83-1,125 Warrant or detainer; Director of Supervision and Services; board; duties.**

(1) If a warrant or detainer is placed against a committed offender by a court, parole agency, or other authority of this or any other jurisdiction, the Director of Supervision and Services shall inquire before such offender becomes eligible for parole whether the authority concerned intends to execute or withdraw the warrant or detainer when the offender is released.

(2) If the authority notifies the Director of Supervision and Services that it intends to execute the warrant or detainer when the offender is released, the Director of Supervision and Services shall advise the authority concerned of the sentence under which the offender is held, the time of parole eligibility, any decision of the board relating to the offender, and the nature of the offender's adjustment during imprisonment and shall give reasonable notice to such authority of the offender's release date.

(3) The board may parole an offender who is eligible for release to a warrant or detainer. If an offender is paroled to such a warrant or detainer, the board may provide, as a condition of release, that if the charge or charges on which the warrant or detainer is based are dismissed, or are satisfied after conviction and sentence, prior to the expiration of the offender's parole term, the authority to whose warrant or detainer the offender is released shall return the offender to serve the remainder of the parole term or such part as the board may determine.

(4) If a person paroled to a warrant or detainer is thereafter sentenced and placed on probation, or released on parole in another jurisdiction, prior to the expiration of the parole term less good time in this state, the board may permit the person to serve the remainder of the parole term or such part as the board may determine concurrently with the person's new probation or parole term. Such concurrent terms may be served in either of the two jurisdictions, and supervision shall be administered in accordance with the Interstate Compact for Adult Offender Supervision.

**Source:** Laws 1969, c. 817, § 56, p. 3101; Laws 1992, LB 816, § 9; Laws 2003, LB 46, § 27; Laws 2018, LB841, § 49.

Effective date July 19, 2018.

**Note:** Laws 2003, LB 46, section 51, provided this section became operative "when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision". By June 2002, the compact had reached this threshold. (See [www.interstatecompact.org](http://www.interstatecompact.org).) LB 46 became effective May 24, 2003.

**Cross References**

**Interstate Compact for Adult Offender Supervision**, see section 29-2639.

**83-1,125.01 Person under jurisdiction of Board of Parole; file; contents; confidential; access by Public Counsel.**

(1) The Board of Parole and the Division of Parole Supervision may maintain an individual file for each person who is under the jurisdiction of the Board of Parole. Such file may be maintained electronically and shall include, when available and appropriate, the following information on such person:

- (a) Admission summary;
- (b) Presentence investigation report;
- (c) Classification reports and recommendations;
- (d) Official records of conviction and commitment along with any earlier criminal records;
- (e) Progress reports and admission-orientation reports;
- (f) Reports of any disciplinary infractions and their disposition;
- (g) Risk and needs assessments;
- (h) Parole plan and parole placement and investigation worksheets;
- (i) Decision guideline scores;
- (j) Parole case plan;
- (k) Parole progress reports and contact notes;
- (l) Arrest and violation reports, including disposition;
- (m) Parole proceedings orders and notices;
- (n) Other documents related to parole supervision;
- (o) Correspondence; and
- (p) Other pertinent data concerning his or her background, conduct, associations, and family relationships.

(2) Any decision concerning release on or revocation of parole or imposition of sanctions shall be made only after the individual file has been reviewed. The contents of the individual file shall be confidential unless disclosed in connection with a public hearing and shall not be subject to public inspection except by court order for good cause shown. The contents of the file shall not be accessible to any person under the jurisdiction of the Board of Parole. A person under the jurisdiction of the board may obtain access to his or her medical records by request to the provider pursuant to sections 71-8401 to 71-8407 notwithstanding the fact that such medical records may be a part of his or her parole file. The board and the Division of Parole Supervision have the authority to withhold decision guideline scores, risk and needs assessment scores, and mental health and psychological records of a person under the jurisdiction of the board when appropriate.

(3) Nothing in this section limits in any manner the authority of the Public Counsel to inspect and examine the records and documents of the board and the Division of Parole Supervision pursuant to sections 81-8,240 to 81-8,254, except that the Public Counsel's access to the medical or mental health records of a person under the jurisdiction of the board shall be subject to his or her consent. The office of Public Counsel shall not disclose the medical or mental health records of a person under the jurisdiction of the board to anyone else, including any other person under the jurisdiction of the board, except as authorized by law.

**Source:** Laws 2018, LB841, § 50.

Effective date July 19, 2018.

**83-1,132 Committed offender under sentence of death; application for exercise of pardon authority by Board of Pardons; denial; date of execution; fix.**

Whenever an application for exercise of the pardon authority is filed with the secretary of the Board of Pardons by a committed offender who is under a sentence of death, the sentence shall not be carried out until the board rules upon such application. If the board denies the relief requested it may set the time and date of execution and refuse to accept for filing further applications from such offender.

**Source:** Laws 1969, c. 817, § 63, p. 3104; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-1,132 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**83-1,135 Act, how cited.**

Sections 83-170 to 83-1,135.05 shall be known and may be cited as the Nebraska Treatment and Corrections Act.

**Source:** Laws 1969, c. 817, § 85, p. 3112; Laws 1992, Third Spec. Sess., LB 13, § 9; Laws 1995, LB 371, § 25; Laws 1997, LB 274, § 2; Laws 1997, LB 364, § 21; Laws 1998, LB 309, § 28; Laws 2003, LB 46, § 28; Laws 2005, LB 538, § 24; Laws 2006, LB 1199, § 99; Laws 2011, LB675, § 11; Laws 2013, LB44, § 4; Laws 2015, LB598, § 32; Laws 2015, LB605, § 105; Laws 2016, LB867, § 2; Laws 2016, LB1094, § 41; Laws 2018, LB841, § 51. Effective date July 19, 2018.

**83-1,135.02 Changes under Laws 2003, LB 46; changes under Laws 2015, LB605; changes under Laws 2016, LB1094; changes under Laws 2018, LB841; legislative intent.**

(1) It is the intent of the Legislature that the changes made to the Nebraska Treatment and Corrections Act by Laws 2003, LB 46, with respect to parole eligibility apply to all committed offenders under sentence and not on parole on May 24, 2003, and to all persons sentenced on and after such date.

(2) It is the intent of the Legislature that the changes made to sections 29-2262, 29-2266, 29-2281, 83-182.01, 83-183, 83-183.01, 83-184, 83-1,119, and 83-1,122 by Laws 2015, LB605, and sections 83-184.01, 83-1,100.02, and 83-1,100.03 apply to all committed offenders under sentence, on parole, or on probation on August 30, 2015, and to all persons sentenced on and after such date.

(3) It is the intent of the Legislature that the changes made to sections 28-105, 29-2204.02, 29-2260, 29-2262, 29-2263, 29-2266, 29-2267, 29-2268, 47-401, 47-502, 83-187, 83-1,119, 83-1,122, and 83-1,122.01 by Laws 2016, LB1094, and sections 29-2266.01 to 29-2266.03 and 83-1,135.03 apply to all committed offenders under sentence, on parole, or on probation on or after April 20, 2016, and to all persons sentenced on and after such date.

(4) It is the intent of the Legislature that the changes made to sections 83-1,110.02 and 83-1,122.01 by Laws 2018, LB841, apply to all committed

offenders under sentence or on parole on or after July 19, 2018, and to all persons sentenced on and after such date.

**Source:** Laws 2003, LB 46, § 50; Laws 2015, LB605, § 106; Laws 2016, LB1094, § 42; Laws 2018, LB841, § 52.

Effective date July 19, 2018.

**83-1,135.03 Parolee; permission to leave; when.**

A parolee serving a custodial sanction in a correctional facility or contract facility may be granted the privilege of leaving the facility during necessary and reasonable hours for any of the following purposes:

- (1) Seeking employment;
- (2) Working at his or her employment;
- (3) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;
- (4) Attending any high school, college, university, or other educational or vocational training program or institution;
- (5) Serious illness or death of a member of such person's immediate family;
- (6) Medical treatment;
- (7) Outpatient or inpatient treatment for alcohol or substance abuse; or
- (8) Engaging in other rehabilitative activities.

**Source:** Laws 2016, LB1094, § 39.

**83-1,135.04 Rules and regulations; guidance documents and internal procedural documents; availability; notice; contents.**

Rules and regulations may authorize the Director of Correctional Services to issue guidance documents and internal procedural documents not inconsistent with law and rules and regulations. Such guidance documents and internal procedural documents shall be made available to the public at one public location and on the department's web site unless the safety and security of a correctional institution would be placed at imminent and substantial risk by such publication. If any guidance document or internal procedural document is not made available to the public, notice shall be given to the deputy public counsel for corrections and to the Inspector General of the Nebraska Correctional System. The notice shall identify all documents not publicly available by title, number of pages, and date adopted. All guidance documents and internal procedural documents shall be made available to any member of the Legislature upon request. Security manuals shall be made available to the Legislature for inspection upon request, but shall not be copied or removed from secure locations as designated by the director.

**Source:** Laws 2016, LB867, § 17.

**83-1,135.05 Rules and regulations; inmate outside correctional facility.**

The Department of Correctional Services shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act regarding any procedures or policies used by the department for any situation where an inmate, under the authority of the department, is outside a correctional facility operated by the department or a contract facility as defined in section 83-1,119



unless the safety and security of a correctional institution would be placed at imminent and substantial risk by such publication.

**Source:** Laws 2016, LB867, § 18.

**Cross References**

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

**ARTICLE 3  
HOSPITALS**

(e) RESIDENTIAL FACILITIES

Section  
83-381. Terms, defined.

(e) RESIDENTIAL FACILITIES

**83-381 Terms, defined.**

As used in sections 83-217, 83-218, and 83-381 to 83-390, unless the context otherwise requires:

(1) Person with an intellectual disability means any person of significant 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;

(2) Department means the Department of Health and Human Services or such person or agency within the Department of Health and Human Services as the chief executive officer of the department may designate; and

(3) Residential facility means an institution specified under section 83-217 to provide residential care by the State of Nebraska for persons with an intellectual disability.

**Source:** Laws 1969, c. 816, § 1, p. 3064; Laws 1986, LB 1177, § 47; Laws 1996, LB 1044, § 952; Laws 2007, LB296, § 798; Laws 2013, LB23, § 53; Laws 2016, LB1039, § 2.

**ARTICLE 4  
PENAL AND CORRECTIONAL INSTITUTIONS**

(h) DISCIPLINARY PROCEDURES IN ADULT INSTITUTIONS

Section  
83-4,114. Disciplinary restrictions and punishment; degree; solitary confinement prohibited; annual report; contents; long-term restrictive housing work group; established; members; meetings; director; duties.  
83-4,114.01. Chief executive officer; responsibilities; duties; discipline of inmates.

(i) JAIL STANDARDS BOARD

83-4,125. Detention and juvenile facilities; terms, defined.  
83-4,126. Jail Standards Board; powers and duties; enumerated.  
83-4,132. Detention and staff secure juvenile facility; inspection; failure to meet minimum standards; corrective action.  
83-4,134. Detention and staff secure juvenile facility; standards applicable; when; violation of standards; effect.

## Section

83-4,134.01. Juvenile facility; legislative intent; placement in room confinement; provisions applicable; report; Inspector General of Nebraska Child Welfare; duties; disciplinary action.

## (l) INCARCERATION WORK CAMPS

83-4,143. Eligibility for incarceration work camp; court, Board of Parole, or Director of Correctional Services; considerations; duration.

## (n) NEBRASKA CORRECTIONAL HEALTH CARE SERVICES ACT

83-4,157. Medical director; duties.

## (h) DISCIPLINARY PROCEDURES IN ADULT INSTITUTIONS

**83-4,114 Disciplinary restrictions and punishment; degree; solitary confinement prohibited; annual report; contents; long-term restrictive housing work group; established; members; meetings; director; duties.**

(1) There shall be no corporal punishment or disciplinary restrictions on diet.

(2) Disciplinary restrictions on clothing, bedding, mail, visitations, use of toilets, washbowls, or scheduled showers shall be imposed only for abuse of such privilege or facility and only as authorized by written directives, guidance documents, and operational manuals.

(3) No person shall be placed in solitary confinement.

(4) The director shall issue an annual report on or before September 15 to the Governor and the Clerk of the Legislature. The report to the Clerk of the Legislature shall be issued electronically. For all inmates who were held in restrictive housing during the prior year, the report shall contain the race, gender, age, and length of time each inmate has continuously been held in restrictive housing. The report shall also contain:

(a) The number of inmates held in restrictive housing;

(b) The reason or reasons each inmate was held in restrictive housing;

(c) The number of inmates held in restrictive housing who have been diagnosed with a mental illness or behavioral disorder and the type of mental illness or behavioral disorder by inmate;

(d) The number of inmates who were released from restrictive housing directly to parole or into the general public and the reason for such release;

(e) The number of inmates who were placed in restrictive housing for his or her own safety and the underlying circumstances for each placement;

(f) To the extent reasonably ascertainable, comparable statistics for the nation and each of the states that border Nebraska pertaining to subdivisions (4)(a) through (e) of this section; and

(g) The mean and median length of time for all inmates held in restrictive housing.

(5)(a) There is hereby established within the department a long-term restrictive housing work group. The work group shall consist of:

(i) The director and all deputy directors. The director shall serve as the chairperson of the work group;

(ii) The behavioral health administrator within the department;

(iii) Two employees of the department who currently work with inmates held in restrictive housing;

(iv) Additional department staff as designated by the director; and

(v) Four members as follows appointed by the Governor:

(A) Two representatives from a nonprofit prisoners' rights advocacy group, including at least one former inmate; and

(B) Two mental health professionals independent from the department with particular knowledge of prisons and conditions of confinement.

(b) The work group shall advise the department on policies and procedures related to the proper treatment and care of offenders in long-term restrictive housing.

(c) The director shall convene the work group's first meeting no later than September 15, 2015, and the work group shall meet at least semiannually thereafter. The chairperson shall schedule and convene the work group's meetings.

(d) The director shall provide the work group with quarterly updates on the department's policies related to the work group's subject matter.

**Source:** Laws 1976, LB 275, § 6; Laws 2015, LB598, § 33; Laws 2016, LB1094, § 43.

**83-4,114.01 Chief executive officer; responsibilities; duties; discipline of inmates.**

(1) The chief executive officer of each facility of the department shall be responsible for the discipline of inmates who reside in such facility. No inmate shall be punished except upon the order of the chief executive officer of the facility, and no punishment shall be imposed otherwise than in accordance with this section.

(2) Except in flagrant or serious cases, punishment for misconduct shall consist of deprivation of privileges. In cases of flagrant or serious misconduct, the chief executive officer may order that an inmate's reduction of term as provided in section 83-1,107 be forfeited or withheld and also that the inmate be confined in disciplinary segregation. During the period of disciplinary segregation, such inmate shall be put on an adequate and healthful diet. An inmate in disciplinary segregation shall be visited at least once every eight hours. No cruel, inhuman, or corporal punishment shall be used on any inmate.

(3) The chief executive officer shall maintain a record of breaches of discipline, of the disposition of each case, and of the punishment, if any, for each such breach. Each breach of discipline shall be entered in the inmate's file, together with the disposition or punishment for the breach.

(4) The chief executive officer may recommend to the director that an inmate who is considered to be incorrigible by reason of frequent intentional breaches of discipline or who is detrimental to the discipline or the morale of the facility be transferred to another facility for stricter safekeeping and closer confinement, subject to the provisions of section 83-176.

(5) The department shall adopt and promulgate rules and regulations to define the term flagrant or serious misconduct.

**Source:** Laws 1969, c. 817, § 16, p. 3082; Laws 1972, LB 1499, § 1; R.S.1943, (1987), § 83-185; Laws 1993, LB 31, § 56; Laws 1995, LB 371, § 26; Laws 1997, LB 364, § 22; Laws 2015, LB598, § 34.

## (i) JAIL STANDARDS BOARD

**83-4,125 Detention and juvenile facilities; terms, defined.**

For purposes of sections 83-4,124 to 83-4,134.01:

(1) Criminal detention facility means any institution operated by a political subdivision or a combination of political subdivisions for the careful keeping or rehabilitative needs of adult or juvenile criminal offenders or those persons being detained while awaiting disposition of charges against them. Criminal detention facility does not include any institution operated by the Department of Correctional Services. Criminal detention facilities shall be classified as follows:

(a) Type I Facilities means criminal detention facilities used for the detention of persons for not more than twenty-four hours, excluding nonjudicial days;

(b) Type II Facilities means criminal detention facilities used for the detention of persons for not more than ninety-six hours, excluding nonjudicial days; and

(c) Type III Facilities means criminal detention facilities used for the detention of persons beyond ninety-six hours;

(2) Juvenile detention facility means an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility does not include any institution operated by the department;

(3) Juvenile facility means a residential child-caring agency as defined in section 71-1926, a juvenile detention facility or staff secure juvenile facility as defined in this section, a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center;

(4) Room confinement means the involuntary restriction of a juvenile placed alone in a cell, alone in a room, or alone in another area, including a juvenile's own room, except during normal sleeping hours, whether or not such cell, room, or other area is subject to video or other electronic monitoring; and

(5) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the department.

**Source:** Laws 1975, LB 417, § 26; Laws 1978, LB 212, § 2; R.S.Supp.,1980, § 83-946; Laws 1992, LB 1184, § 18; Laws 1994, LB 461, § 2; Laws 2000, LB 1167, § 51; Laws 2003, LB

760, § 19; Laws 2013, LB561, § 65; Laws 2016, LB894, § 20;  
Laws 2018, LB670, § 16.  
Operative date July 19, 2018.

**83-4,126 Jail Standards Board; powers and duties; enumerated.**

(1) Except as provided in subsection (2) of this section, the Jail Standards Board shall have the authority and responsibility:

(a) To develop minimum standards for the construction, maintenance, and operation of criminal detention facilities;

(b) To perform other duties as may be necessary to carry out the policy of the state regarding criminal detention facilities, juvenile detention facilities, and staff secure juvenile facilities as stated in sections 83-4,124 to 83-4,134.01; and

(c) Consistent with the purposes and objectives of the Juvenile Services Act, to develop standards for juvenile detention facilities and staff secure juvenile facilities, including, but not limited to, standards for physical facilities, care, programs, and disciplinary procedures, and to develop guidelines pertaining to the operation of such facilities.

(2) The Jail Standards Board shall not have authority over or responsibility for correctional facilities that are accredited by a nationally recognized correctional association. A correctional facility that is accredited by a nationally recognized correctional association shall show proof of accreditation annually to the Jail Standards Board. For purposes of this subsection, nationally recognized correctional association includes, but is not limited to, the American Correctional Association or its successor.

**Source:** Laws 1975, LB 417, § 28; Laws 1978, LB 212, § 3; R.S.Supp.,1980, § 83-948; Laws 1990, LB 663, § 17; Laws 1992, LB 1184, § 19; Laws 2011, LB390, § 27; Laws 2013, LB561, § 66; Laws 2016, LB894, § 21.

**Cross References**

Juvenile Services Act, see section 43-2401.

**83-4,132 Detention and staff secure juvenile facility; inspection; failure to meet minimum standards; corrective action.**

If an inspection under sections 83-4,124 to 83-4,134.01 discloses that the criminal detention facility, juvenile detention facility, or staff secure juvenile facility does not meet the minimum standards established by the Jail Standards Board, the board shall send notice, together with the inspection report, to the governing body responsible for the facility. The appropriate governing body shall promptly meet to consider the inspection report, and the inspection personnel shall appear before the governing body to advise and consult concerning appropriate corrective action. The governing body shall then initiate appropriate corrective action within six months after the receipt of such inspection report or may voluntarily close the facility or the objectionable portion thereof.

**Source:** Laws 1975, LB 417, § 31; Laws 1978, LB 212, § 9; R.S.Supp.,1980, § 83-951; Laws 1992, LB 1184, § 21; Laws 1996, LB 233, § 19; Laws 2013, LB561, § 68; Laws 2016, LB894, § 22.

**83-4,134 Detention and staff secure juvenile facility; standards applicable; when; violation of standards; effect.**

Sections 83-4,124 to 83-4,134.01 shall be implemented upon completion of the development of minimum standards by the Jail Standards Board. Thereafter, inspections shall begin, but no criminal detention facility, juvenile detention facility, or staff secure juvenile facility shall be closed within one year of the date of first filing of the minimum standards in the office of the Secretary of State. After one year from the date of first filing of the minimum standards, a facility may be closed for any violation of the minimum standards. Those standards relating to the construction of the facility itself and its plumbing, heating, and wiring systems shall not be enforced so as to require the closing of any facility for a period of two years from the date of the first filing of the minimum standards unless such violations are of immediate danger to the safety of the persons confined in the facility or facility personnel, in which case such period shall be one year.

**Source:** Laws 1975, LB 417, § 33; Laws 1978, LB 212, § 11; R.S.Supp.,1980, § 83-953; Laws 1992, LB 1184, § 23; Laws 2013, LB561, § 70; Laws 2016, LB894, § 23.

**83-4,134.01 Juvenile facility; legislative intent; placement in room confinement; provisions applicable; report; Inspector General of Nebraska Child Welfare; duties; disciplinary action.**

(1) It is the intent of the Legislature to establish a system of investigation and performance review in order to provide increased accountability and oversight regarding the use of room confinement for juveniles in a juvenile facility.

(2) The following shall apply regarding placement in room confinement of a juvenile in a juvenile facility:

(a) Room confinement of a juvenile for longer than one hour shall be documented and approved in writing by a supervisor in the juvenile facility. Documentation of the room confinement shall include the date of the occurrence; the race, ethnicity, age, and gender of the juvenile; the reason for placement of the juvenile in room confinement; an explanation of why less restrictive means were unsuccessful; the ultimate duration of the placement in room confinement; facility staffing levels at the time of confinement; and any incidents of self-harm or suicide committed by the juvenile while he or she was isolated;

(b) If any physical or mental health clinical evaluation was performed during the time the juvenile was in room confinement for longer than one hour, the results of such evaluation shall be considered in any decision to place a juvenile in room confinement or to continue room confinement;

(c) The juvenile facility shall submit a report quarterly to the Legislature on the juveniles placed in room confinement; the length of time each juvenile was in room confinement; the race, ethnicity, age, and gender of each juvenile placed in room confinement; facility staffing levels at the time of confinement; and the reason each juvenile was placed in room confinement. The report shall specifically address each instance of room confinement of a juvenile for more than four hours, including all reasons why attempts to return the juvenile to the general population of the juvenile facility were unsuccessful. The report shall also detail all corrective measures taken in response to noncompliance with this section. The report shall redact all personal identifying information but shall

provide individual, not aggregate, data. The report shall be delivered electronically to the Legislature. The initial quarterly report shall be submitted within two weeks after the quarter ending on September 30, 2016. Subsequent reports shall be submitted for the ensuing quarters within two weeks after the end of each quarter;

(d) The Inspector General of Nebraska Child Welfare shall review all data collected pursuant to this section in order to assess the use of room confinement for juveniles in each juvenile facility and prepare an annual report of his or her findings, including, but not limited to, identifying changes in policy and practice which may lead to decreased use of such confinement as well as model evidence-based criteria to be used to determine when a juvenile should be placed in room confinement. The report shall be delivered electronically to the Legislature on an annual basis; and

(e) Any juvenile facility which is not a residential child-caring agency which fails to comply with the requirements of this section is subject to disciplinary action as provided in section 83-4,134. Any juvenile facility which is a residential child-caring agency which fails to comply with the requirements of this section is subject to disciplinary action as provided in section 71-1940.

**Source:** Laws 2016, LB894, § 24; Laws 2018, LB670, § 17.  
Operative date July 19, 2018.

#### (l) INCARCERATION WORK CAMPS

##### **83-4,143 Eligibility for incarceration work camp; court, Board of Parole, or Director of Correctional Services; considerations; duration.**

(1) It is the intent of the Legislature that the court target the felony offender (a) who is eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison.

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.

(3) It is also the intent of the Legislature that the Board of Parole may recommend placement of felony offenders at the incarceration work camp. The offenders recommended by the board shall be offenders currently housed at other Department of Correctional Services adult correctional facilities and shall complete the incarceration work camp programming prior to release on parole.

(4) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.

(5) The Director of Correctional Services may assign a felony offender to an incarceration work camp if he or she believes it is in the best interests of the felony offender and of society, except that offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be assigned to an incarceration work camp pursuant to this subsection.

**Source:** Laws 1997, LB 882, § 3; Laws 2000, LB 288, § 1; Laws 2005, LB 538, § 28; Laws 2006, LB 1199, § 104; Laws 2007, LB83, § 2; Laws 2009, LB97, § 29; Laws 2009, LB274, § 2; Laws 2015, LB268, § 33; Referendum 2016, No. 426.

**Note:** The changes made to section 83-4,143 by Laws 2015, LB 268, section 33, have been omitted because of the vote on the referendum at the November 2016 general election.

#### (n) NEBRASKA CORRECTIONAL HEALTH CARE SERVICES ACT

##### **83-4,157 Medical director; duties.**

The medical director shall:

- (1) Coordinate all clinical services;
- (2) Participate in the selection and supervision of all clinical staff employed by or under contract with the department, including medical doctors, physician assistants, pharmacists, pharmacy technicians, registered nurses, licensed practical nurses, advanced practice registered nurses practicing under and in accordance with their respective certification acts, mental health practitioners, alcohol and drug counselors, laboratory technicians, physical therapists, optometrists, audiologists, dentists, dental assistants, and dental hygienists;
- (3) Maintain and preserve the medical records of health care services;
- (4) Approve the purchasing of all necessary medical supplies and medical equipment for the department;
- (5) Recommend all necessary programs for the preservice, inservice, and continuing medical training and education of the health care staff and other relevant staff of the department, including training specifically designed to promote prompt and effective responses by all staff of the department to medical emergencies;
- (6) Develop and implement condition-specific medical treatment protocols that ensure compatibility with a community standard of health care, including protocols addressing the: (a) Treatment of gastrointestinal bleeds; (b) detection and treatment of all communicable diseases; (c) treatment of gender-specific problems; (d) treatment of diabetes; (e) treatment of hypertension; (f) treatment of headaches; (g) utilization of surgical procedures; (h) control of infection; (i)



provision of dental care; (j) provision of age-specific and gender-specific routine health maintenance; (k) means by which inmates obtain access to health care services; (l) use of prescribed drugs, devices, or biologicals for the purpose of pain management; (m) referral of patients to medical specialists not in the employ of the department; and (n) initiation, observance, and termination of do not resuscitate orders initiated pursuant to the Rights of the Terminally Ill Act;

(7) Develop and implement a system of general discharge planning for the health care services to be received by inmates who are soon to be released from the custody of the department and who have chronic health care problems, including establishment of a protocol to determine whether or not an inmate soon to be released should be prescribed and dispensed a medication-assisted treatment that could assist in reducing or eliminating the inmate's use of opiates;

(8) Develop and implement a comprehensive health care services plan;

(9) Develop and implement an internal credentialing program for the employment and retention of the health care staff of the department based on a community standard of health care; and

(10) Develop and implement an internal peer review and quality assurance program based upon a community standard of health care.

**Source:** Laws 2001, LB 154, § 5; Laws 2004, LB 1083, § 142; Laws 2005, LB 256, § 98; Laws 2018, LB841, § 53.  
Effective date July 19, 2018.

#### Cross References

Rights of the Terminally Ill Act, see section 20-401.

## ARTICLE 9

### DEPARTMENT OF CORRECTIONAL SERVICES

#### (a) GENERAL PROVISIONS

##### Section

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## (a) GENERAL PROVISIONS

**83-903 Reentry program; development; reentry program administrator; purpose of program; department; duties.**

The Department of Correctional Services, in consultation with the Board of Parole, shall develop a reentry program for individuals incarcerated in a department correctional facility, individuals who have been discharged from a department correctional facility within the prior eighteen months, and parolees. The department shall hire a reentry program administrator to develop and oversee the reentry program and additional staff as needed to implement the reentry program. The purpose of the reentry program is to facilitate a standard systemwide program of reentry for individuals leaving correctional facilities or transitioning off community supervision. The primary objectives of the reentry program are to reduce recidivism, to identify, assess, and provide treatment options for individuals with mental illness, to increase public safety, and to improve the overall transition of the individual from the criminal justice system into the community. Prior to the discharge of an individual from a department correctional facility, the department shall provide such individual with an opportunity to obtain a state identification card or renew a motor vehicle operator's license.

**Source:** Laws 2014, LB907, § 13; Laws 2018, LB258, § 1.  
 Operative date July 1, 2020.

**83-904 Vocational and Life Skills Program; created; Vocational and Life Skills Programming Fund; created; use; investment; reports.**

(1) The Vocational and Life Skills Program is created within the Department of Correctional Services, in consultation with the Board of Parole. The program shall provide funding to aid in the establishment and provision of community-based vocational training and life skills training for adults who are incarcerated, formerly incarcerated, or serving a period of supervision on either probation or parole.

(2) The Vocational and Life Skills Programming Fund is created. The fund shall consist of appropriations from the Legislature, funds donated by nonprofit entities, funds from the federal government, and funds from other sources. Up to thirty percent of the fund may be used for staffing the reentry program created under section 83-903 and to provide treatment to individuals preparing for release from incarceration. At least seventy percent of the fund shall be used to provide grants to community-based organizations, community colleges, fed-

erally recognized or state-recognized Indian tribes, or nonprofit organizations that provide vocational and life skills programming and services to adults and juveniles who are incarcerated, who have been incarcerated within the prior eighteen months, or who are serving a period of supervision on either probation or parole. The department, in awarding grants, shall give priority to programs, services, or training that results in meaningful employment, and no money from the fund shall be used for capital construction. 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.

(3) The department, in consultation with the Board of Parole, shall adopt and promulgate rules and regulations to carry out the Vocational and Life Skills Program. The rules and regulations shall include, but not be limited to, a plan for evaluating the effectiveness of programs, services, and training that receive funding and a reporting process for aid recipients. The reentry program administrator shall report quarterly to the Governor and the Clerk of the Legislature beginning October 1, 2014, on the distribution and use of the aid distributed under the Vocational and Life Skills Program, including how many individuals received programming, the types of programming, the cost per individual for each program, service, or training provided, how many individuals successfully completed their programming, and information on any funds that have not been used. The report to the Clerk of the Legislature shall be submitted electronically. Any funds not distributed to community-based organizations, community colleges, federally recognized or state-recognized Indian tribes, or nonprofit organizations under this subsection shall be retained by the department to be distributed on a competitive basis under the Vocational and Life Skills Program. These funds shall not be expended by the department for any other purpose.

**Source:** Laws 2014, LB907, § 14; Laws 2015, LB598, § 35.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **83-906 Staffing analysis; report.**

The Department of Correctional Services shall conduct a department-wide staffing analysis of all positions, including a specific analysis regarding behavioral health staffing, in an effort to make a comprehensive determination of staffing needs. Concurrently, the department shall make short-term recommendations for needed staffing, including, but not limited to, facility administrative and support positions, in order to improve the effectiveness of staffing.

The staffing analysis shall be completed and a report of its findings and subsequent staffing recommendations submitted electronically to the Legislature no later than September 15, 2020. Subsequent updates of the staffing analysis shall be completed and shall be submitted electronically to the Legislature on or before September 15, 2026, and at least every six years thereafter or more frequently at the discretion of the department.

**Source:** Laws 2018, LB841, § 55.

Effective date July 19, 2018.

**83-907 Correctional system overcrowding emergency; Department of Correctional Services and Board of Parole; plan; contents; report.**

To ensure public safety in the event a correctional system overcrowding emergency is ever declared or determined to exist, the Department of Correctional Services and the Board of Parole shall submit to the Legislature a proposed plan which describes the process of implementing the accelerated parole review process required by section 83-962. The plan shall include, but not be limited to:

(1) The process by which the Director of Correctional Services shall certify that an overcrowding emergency exists;

(2) The process by which the department shall prepare and submit to the board a listing of parole-eligible committed offenders to be considered or reconsidered accelerated for parole;

(3) Any statutory changes required or funding necessary to accommodate such process;

(4) The process by which the board shall examine committed offenders during the accelerated parole review;

(5) A review of the analysis for granting parole pursuant to section 83-1,114 and whether this process and the factors set out in such section are sufficient or adequate for the accelerated parole review process required by section 83-962;

(6) A review of the process of supervising parolees released pursuant to the accelerated review process and the necessary means to ensure public safety; and

(7) Any statutory changes required or resources necessary to accommodate the existence of an overcrowding emergency status and to facilitate the potential requisite gubernatorial declaration of such emergency.

The plan shall be submitted electronically in a report to the Legislature on or before December 1, 2018.

**Source:** Laws 2018, LB841, § 56.

Effective date July 19, 2018.

**83-915.01 Inmate Welfare and Club Accounts Fund; created; use; investment.**

The Inmate Welfare and Club Accounts Fund is created. The fund shall consist of revenue from soft drinks sold to inmates in the custody of the Department of Correctional Services, including proceeds from recycling cans or other containers containing such soft drinks, profit from departmental canteens, interest earned by the fund, interest on inmate trust funds pursuant to section 83-915, or other revenue at the department's discretion. The fund shall be used to provide recreational activities and equipment for inmates at all of the department's correctional facilities. The fund shall be administered by the Director of Correctional Services or his or her designee. 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 2002, LB 604, § 2; Laws 2015, LB605, § 107.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**83-918 Strategic plan; contents; report; appear at hearing.**

(1) For the biennium ending June 30, 2019, and the biennium ending June 30, 2021, the Department of Correctional Services shall, as part of the appropriations request process pursuant to subsection (1) of section 81-132, include a strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the department believes are fair measures of its progress in meeting each program's main purpose or purposes, and benchmarks for improving performance on the key goals. The department shall also report whether the benchmarks are being met and, if not, the expected timeframes for meeting them.

(2) Not later than September 15 in 2017, 2018, 2019, 2020, and 2021, the Department of Correctional Services shall report electronically to the Judiciary Committee of the Legislature and the Appropriations Committee of the Legislature on the progress towards the key goals identified pursuant to this section that occurred in the previous twelve months. In calendar years 2017, 2018, 2019, 2020, and 2021, the department shall appear at a joint hearing of the Judiciary Committee and Appropriations Committee and present the report.

**Source:** Laws 2015, LB33, § 3; Laws 2016, LB1092, § 11.

**(c) DIVISION OF COMMUNITY-CENTERED SERVICES****83-931 Assistant director of the Division of Community-Centered Services; qualifications.**

The Director of Correctional Services shall appoint as assistant director of the Division of Community-Centered Services any person who has an appropriate academic background and adequate training and experience.

**Source:** Laws 1975, LB 417, § 9; Laws 1993, LB 31, § 77; Laws 2015, LB598, § 36.

**83-933 Division of Parole Supervision; Director of Supervision and Services; duties.**

Beginning July 1, 2016, until July 19, 2018, the Office of Parole Administration shall be within the Board of Parole. Beginning on July 19, 2018, the Division of Parole Supervision shall be within the Board of Parole.

Subject to supervision, the Director of Supervision and Services shall be charged with the administration of parole services in the community pursuant to the provisions of section 83-1,102, implementation and administration of the Interstate Compact for Adult Offender Supervision as it affects parolees, community supervision of sex offenders pursuant to section 83-174.03, and supervision of parolees either paroled in Nebraska and supervised in another state or paroled in another state and supervised in Nebraska, pursuant to the compact.

**Source:** Laws 1975, LB 417, § 11; Laws 1993, LB 31, § 79; Laws 2003, LB 46, § 30; Laws 2006, LB 1199, § 105; Laws 2015, LB598, § 37; Laws 2018, LB841, § 54.  
Effective date July 19, 2018.

**Note:** Laws 2003, LB 46, section 51, provided this section became operative “when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision”. By June 2002, the compact had reached this threshold. (See [www.interstatecompact.org](http://www.interstatecompact.org).) LB 46 became effective May 24, 2003.

**Cross References**

**Interstate Compact for Adult Offender Supervision**, see section 29-2639.

(f) CRIMINAL DETENTION FACILITIES

**83-954 Repealed. Laws 2015, LB 2, § 1.**

(i) CORRECTIONAL SYSTEM OVERCROWDING EMERGENCY ACT

**83-962 Correctional system overcrowding emergency; Governor; declaration; when; effect.**

(1) Until July 1, 2020, the Governor may declare a correctional system overcrowding emergency whenever the director certifies that the department’s inmate population is over one hundred forty percent of design capacity. Beginning July 1, 2020, a correctional system overcrowding emergency shall exist whenever the director certifies that the department’s inmate population is over one hundred forty percent of design capacity. The director shall so certify within thirty days after the date on which the population first exceeds one hundred forty percent of design capacity.

(2) During a correctional system overcrowding emergency, the board shall immediately consider or reconsider committed offenders eligible for parole who have not been released on parole.

(3) Upon such consideration or reconsideration, and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of each committed offender unless it is of the opinion that such release should be deferred because:

(a) The board has determined that it is more likely than not that the committed offender will not conform to the conditions of parole;

(b) The board has determined that release of the committed offender would have a very significant and quantifiable effect on institutional discipline; or

(c) The board has determined that there is a very substantial risk that the committed offender will commit a violent act against a person.

(4) In making the determination regarding the risk that a committed offender will not conform to the conditions of parole, the board shall take into account the factors set forth in subsection (2) of section 83-1,114.

(5) The board shall continue granting parole to offenders under this section until the director certifies that the population is at operational capacity. The director shall so certify within thirty days after the date on which the population first reaches operational capacity.

**Source:** Laws 2003, LB 46, § 48; Laws 2015, LB598, § 38.

(j) LETHAL INJECTION

**83-964 Sentence of death; how enforced.**

A sentence of death shall be enforced by the intravenous injection of a substance or substances in a quantity sufficient to cause death. The lethal

substance or substances shall be administered in compliance with an execution protocol created and maintained by the Department of Correctional Services.

**Source:** Laws 1973, LB 268, § 17; R.S.1943, (2008), § 29-2532; Laws 2009, LB36, § 9; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-964 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**83-965 Director of Correctional Services; written execution protocol; contents.**

(1) A sentence of death shall be enforced by the Director of Correctional Services. Upon receipt of an execution warrant, the director shall proceed at the time named in the warrant to enforce the sentence, unless the director is informed that enforcement of the sentence has been stayed by competent judicial authority, the sentence has been commuted, or the conviction has been pardoned.

(2) The director shall create, modify, and maintain a written execution protocol describing the process and procedures by which an execution will be carried out consistent with this section. The director shall (a) select the substance or substances to be employed in an execution by lethal injection, (b) create a documented process for obtaining the necessary substances, (c) designate an execution team composed of one or more executioners and any other personnel deemed necessary to effectively and securely conduct an execution, (d) describe the respective responsibilities of each member of the execution team, (e) describe the training required of each member of the execution team, and (f) perform or authorize any other details deemed necessary and appropriate by the director.

(3) The execution protocol shall require that the first or only substance injected be capable of rendering the convicted person unconscious and that a determination sufficient to reasonably verify that the convicted person is unconscious be made before the administration of any additional substances, if any.

**Source:** Laws 2009, LB36, § 10; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-965 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

**83-966 Lethal injection; participation of professional; how treated under other law.**

Notwithstanding any other provision of law:

(1) Any prescription, preparation, compounding, dispensing, obtaining, or administration of the substances deemed necessary to perform a lethal injection shall not constitute the practice of medicine or any other profession relating to health care which is subject by law to regulation, licensure, or certification;

(2) A pharmacist or pharmaceutical supplier may dispense the designated substances, without a prescription, to the Director of Correctional Services or the director's designee upon production of a written request from the director for the designated substances necessary to conduct an execution;

(3) Obtaining, preparing, compounding, dispensing, and administering the substance or substances designated by the execution protocol does not violate the Uniform Controlled Substances Act or sections 71-2501 to 71-2512; and

(4) If a person who is a member of the execution team is licensed by a board or department, the licensing board or department shall not censure, reprimand, suspend, revoke, or take any other disciplinary action against that person's license as a result of that person's participation in a court-ordered execution.

**Source:** Laws 2009, LB36, § 11; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-966 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

#### Cross References

Uniform Controlled Substances Act, see section 28-401.01.

### **83-967 Director of Correctional Services; administration of substances; execution team; confidentiality.**

(1) The Director of Correctional Services may designate any person qualified under the terms of the execution protocol to administer to the convicted person the substances necessary to comply with the execution protocol.

(2) The identity of all members of the execution team, and any information reasonably calculated to lead to the identity of such members, shall be confidential and exempt from disclosure pursuant to sections 84-712 to 84-712.09 and shall not be subject to discovery or introduction as evidence in any civil proceeding unless extraordinary good cause is shown and a protective order is issued by a district court limiting dissemination of such information.

**Source:** Laws 2009, LB36, § 12; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-967 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

### **83-968 Method of execution declared unconstitutional; effect on sentence.**

No death sentence shall be voided or reduced as a result of a determination that a method of execution was declared unconstitutional under the Constitution of Nebraska or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

**Source:** Laws 2009, LB36, § 13; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-968 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

### **83-969 Punishment inflicted; exclude view of persons; exception.**

When any convicted person is sentenced to death, such punishment shall be inflicted at a Department of Correctional Services facility under the supervision of the Director of Correctional Services and in such a manner as to exclude the



view of all persons except those permitted to be present as provided in sections 83-970 and 83-971.

**Source:** Laws 1973, LB 268, § 18; R.S.1943, (2008), § 29-2533; Laws 2009, LB36, § 14; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-969 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

### **83-970 Execution; persons permitted.**

Besides the Director of Correctional Services and those persons required to be present under the execution protocol, the following persons, and no others, except as provided in section 83-971, may be present at the execution: (1) The member of the clergy in attendance upon the convicted person; (2) no more than three persons selected by the convicted person; (3) no more than three persons representing the victim or victims of the crime; and (4) such other persons, not exceeding six in number, as the director may designate. At least two persons designated by the director shall be professional members of the Nebraska news media.

**Source:** Laws 1973, LB 268, § 19; R.S.1943, (2008), § 29-2534; Laws 2009, LB36, § 15; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-970 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

### **83-971 Director of Correctional Services; military force necessary to carry out punishment; inform Governor.**

Whenever the Director of Correctional Services shall deem the presence of a military force necessary to carry into effect the provisions of sections 83-964 and 83-969, he or she shall make the fact known to the Governor of the state, who is hereby authorized to call out so much of the military force of the state as in his or her judgment may be necessary for the purpose.

**Source:** Laws 1973, LB 268, § 20; R.S.1943, (2008), § 29-2535; Laws 2009, LB36, § 16; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-971 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

### **83-972 Director of Correctional Services; inflict punishment; return of proceedings; clerk of court; duty.**

Whenever the Director of Correctional Services shall inflict the punishment of death upon a convicted person, in obedience to the command of the court, he or she shall make return of his or her proceedings as soon as may be to the clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence.

**Source:** Laws 1973, LB 268, § 21; R.S.1943, (2008), § 29-2536; Laws 2009, LB36, § 17; Laws 2015, LB268, § 35; Referendum 2016, No. 426.

**Note:** The repeal of section 83-972 by Laws 2015, LB 268, section 35, is not effective because of the vote on the referendum at the November 2016 general election.

## ARTICLE 12

## DEVELOPMENTAL DISABILITIES SERVICES

## Section

- 83-1201. Act, how cited.  
 83-1202. Legislative intent.  
 83-1205. Developmental disability, defined.  
 83-1206.01. Intellectual disability, defined.  
 83-1209. Director; duties.  
 83-1212.01. Advisory Committee on Developmental Disabilities; created; members; expenses; duties.  
 83-1213. Repealed. Laws 2017, LB333, § 13.  
 83-1216. Department; duties; services; legislative intent; priorities.  
 83-1216.01. Quality management and improvement plan; purpose; contents; implementation report.  
 83-1216.02. Insufficient funds to provide services; department; duties.  
 83-1227. Department; prepare comprehensive plan for Beatrice State Developmental Center and Bridges program; contents; assessment of facilities; public hearing; report.

**83-1201 Act, how cited.**

Sections 83-1201 to 83-1227 shall be known and may be cited as the Developmental Disabilities Services Act.

**Source:** Laws 1991, LB 830, § 1; Laws 1994, LB 1136, § 1; Laws 1997, LB 852, § 1; Laws 2016, LB895, § 1; Laws 2016, LB1039, § 3; Laws 2017, LB333, § 3; Laws 2018, LB793, § 11.  
 Operative date July 19, 2018.

**83-1202 Legislative intent.**

It is the intent of the Legislature that:

(1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;

(2) All persons with developmental disabilities shall have access to a full array of services appropriate for them as individuals;

(3) All persons with developmental disabilities shall have a right to live, work, and recreate with people who are not disabled;

(4) All persons with developmental disabilities shall be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;

(5) All persons with developmental disabilities shall have the right to receive age-appropriate services consistent with their individual needs, potentials, and abilities;

(6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled; and

(7) Persons who deliver services to persons with developmental disabilities shall be assured a uniform system of compensation and training and a full range of work-site enhancements which attract and retain qualified employees.

**Source:** Laws 1991, LB 830, § 2; Laws 2017, LB333, § 4.

**83-1205 Developmental disability, defined.**

Developmental disability shall mean a severe, chronic disability, including an intellectual disability, other than mental illness, which:

(1) Is attributable to a mental or physical impairment unless the impairment is solely attributable to a severe emotional disturbance or persistent mental illness;

(2) Is manifested before the age of twenty-two years;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one of each of the following areas of adaptive functioning:

(a) Conceptual skills, including language, literacy, money, time, number concepts, and self-direction;

(b) Social skills, including interpersonal skills, social responsibility, self-esteem, gullibility, wariness, social problem solving, and the ability to follow laws and rules and to avoid being victimized; and

(c) Practical skills, including activities of daily living, personal care, occupational skills, healthcare, mobility, and the capacity for independent living; and

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth through the age of nine years inclusive who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the major life activities described in subdivision (4) of this section if the individual, without services and support, has a high probability of meeting those criteria later in life.

**Source:** Laws 1991, LB 830, § 5; Laws 2013, LB23, § 59; Laws 2016, LB1039, § 4.

**83-1206.01 Intellectual disability, defined.**

Intellectual disability means significant 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 2016, LB1039, § 5.

**83-1209 Director; duties.**

To carry out the policies and purposes of the Developmental Disabilities Services Act, the director shall:

(1) Ensure effective management by (a) determining whether applicants are eligible for specialized services, (b) authorizing service delivery for eligible persons, (c) ensuring that services are available, accessible, and coordinated, (d) ensuring that eligible persons have their needs assessed by a team process, have individual program plans developed by a team process to address assessed needs, which plans incorporate the input of the individual and the family, and have services delivered in accordance with the program plan, (e) having the

amount of funding for specialized services determined by an objective assessment process, (f) providing information and referral services to persons with developmental disabilities and their families, (g) promoting the development of pilot projects of high quality, cost-efficient services provided by specialized programs, and (h) administering the Beatrice State Developmental Center;

(2) Ensure a coordinated statewide response by (a) developing a comprehensive and integrated statewide plan for specialized services to persons with developmental disabilities in conjunction with state and local officials, designated advocates for such persons, service providers, and the general public, (b) reporting biennially to the Legislature, the Governor, service providers, and the public on persons served and progress made toward meeting requirements of the plan, and (c) creating a statewide registry of persons eligible for specialized services. The report submitted to the Legislature shall be submitted electronically;

(3) Ensure specialized services which are efficient and individualized by (a) developing a written policy which ensures the adequate and equitable distribution of fiscal resources based upon a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change and which also includes a plan for funding shortfalls and (b) administering all state and federal funds as may be allowed by law;

(4) Ensure maximum quality of services by (a) developing a due process mechanism for resolution of disputes, (b) coordinating the development and implementation of a quality management and improvement plan as described in section 83-1216.01, (c) developing certification and accreditation requirements for service providers, (d) providing technical assistance to local service providers, and (e) providing eligible persons, their families, and the designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with copies of all reports resulting from surveys of providers of specialized services conducted as part of the certification and accreditation process; and

(5) Establish and staff a developmental disabilities division which shall assist in carrying out the policies and purposes of the Developmental Disabilities Services Act.

**Source:** Laws 1991, LB 830, § 9; Laws 2004, LB 297, § 2; Laws 2009, LB288, § 40; Laws 2012, LB782, § 220; Laws 2017, LB333, § 5.

**83-1212.01 Advisory Committee on Developmental Disabilities; created; members; expenses; duties.**

(1) There is hereby created the Advisory Committee on Developmental Disabilities. The advisory committee shall consist of a representative of a statewide advocacy organization for persons with developmental disabilities and their families, a representative of Nebraska's designated protection and advocacy organization, a representative of the Nebraska Planning Council on Developmental Disabilities, a representative of the University Center for Excellence in Developmental Disability Education, Research and Service as defined in section 68-1114, and not more than fifteen additional members. At least fifty-one percent of the members shall be persons with developmental disabilities and family members of persons with developmental disabilities.

(2) The members shall be appointed by the Governor for staggered terms of three years. Any vacancy shall be filled by the Governor for the remainder of

the term. One of the members shall be designated as chairperson by the Governor. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The advisory committee shall advise the department regarding all aspects of the funding and delivery of services to persons with developmental disabilities.

(4) The advisory committee shall (a) provide sufficient oversight to ensure that persons placed in the custody of the department under the Developmental Disabilities Court-Ordered Custody Act are receiving the least restrictive treatment and services necessary and (b) oversee the design and implementation of the quality management and improvement plan described in section 83-1216.01.

(5) The department shall inform the advisory committee of proposed systemic changes to services for persons with developmental disabilities at least thirty days prior to implementation of the changes so that the advisory committee may provide for a response to the proposed changes. If the director determines that circumstances require implementation of the changes prior to such notice, the department shall inform the advisory committee as soon as possible. The advisory committee, in partnership with the director, shall establish criteria for the process of providing the information and receiving the response.

**Source:** Laws 1994, LB 1136, § 4; Laws 2005, LB 206, § 35; Laws 2017, LB333, § 6.

#### Cross References

Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.

### **83-1213 Repealed. Laws 2017, LB333, § 13.**

### **83-1216 Department; duties; services; legislative intent; priorities.**

(1) The department shall administer the medicaid home and community-based services waivers upon application approval by the federal Centers for Medicare and Medicaid Services. The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the department and approved by the federal Centers for Medicare and Medicaid Services.

(2) The department shall provide directly or by contract service coordination to Nebraska residents found to be eligible for specialized services.

(3) It is the intent of the Legislature that the department take all possible steps to maximize federal funding. All Nebraska residents eligible for funding for specialized services through the department shall apply for and accept any federal medicaid benefits for which they may be eligible and benefits from other funding sources within the department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies to the maximum extent possible.

(4) The priorities for funding the medicaid home and community-based services waivers under this section are as follows:

(a) The first funding priority of the state shall be responding to the needs of persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person;

(b) The second funding priority of the state in responding to the needs of persons with developmental disabilities shall be for persons that have resided in

an institutional setting for a period of at least twelve consecutive months and who are requesting community-based services;

(c) The third funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving wards of the department or persons placed under the supervision of the Office of Probation Administration by the Nebraska court system who are transitioning upon age nineteen with no other alternatives as determined by the department to support residential services necessary to pursue economic self-sufficiency;

(d) The fourth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving persons transitioning from the education system upon attaining twenty-one years of age to maintain skills and receive the day services necessary to pursue economic self-sufficiency;

(e) The fifth funding priority of the state in responding to the needs of persons with developmental disabilities shall be, upon approval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, for serving a dependent of a member of the armed forces of the United States who is a legal resident of this state due to the service member's military assignment in Nebraska; and

(f) The sixth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving all other persons by date of application.

**Source:** Laws 1991, LB 830, § 16; Laws 1992, Third Spec. Sess., LB 4, § 1; Laws 1994, LB 1136, § 5; Laws 1996, LB 1044, § 975; Laws 2004, LB 297, § 3; Laws 2007, LB296, § 809; Laws 2017, LB333, § 7; Laws 2018, LB685, § 1; Laws 2018, LB793, § 12.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB685, section 1, with LB793, section 12, to reflect all amendments.

**Note:** Changes made by LB685 became effective July 19, 2018. Changes made by LB793 became operative July 19, 2018.

### **83-1216.01 Quality management and improvement plan; purpose; contents; implementation report.**

(1)(a) The department shall, with the assistance and support of the Advisory Committee on Developmental Disabilities, develop and implement a quality management and improvement plan to promote and monitor quality relating to services and quality of life for persons with developmental disabilities.

(b) The purpose of the quality management and improvement plan is to provide information necessary for an accurate assessment of the quality and effectiveness of services for persons with developmental disabilities and their families and the delivery of such services, with special attention to the impact that the services have on the quality of life of recipients and their families.

(c) The quality management and improvement plan shall reflect national best practice for services for persons with developmental disabilities and their families as determined by the department with the assistance of the advisory committee.

(d) The quality management and improvement plan shall assess, through both quantitative and qualitative means, (i) the quality of services provided to persons with developmental disabilities and their families, (ii) the ability of the services provided to meet the needs of the recipients of the services, (iii) the effect of the services to support or improve the quality of life of the recipients of

the services, and (iv) the satisfaction of the recipients with the process of determination of eligibility and the process of delivery of the services. In order to develop the quality management and improvement plan, the department shall use procedures to collect data from recipients of services for persons with disabilities and their families by relying on external, independent evaluators who are not employed by the department. The quality management and improvement plan shall give significance to input gathered from recipients of services for persons with developmental disabilities and families of such recipients and include information gathered from the department.

(e) The quality management and improvement plan shall include recommendations for improvements to the types of services and the delivery of services for persons with developmental disabilities and their families.

(2) The department shall provide a quality management plan electronically to the Legislature no later than September 30, 2017. In the plan the department shall detail its approach to ensuring a sustainable, continuous, quality improvement management system for the delivery of services for persons with developmental disabilities and their families that incorporates responsibilities of the department and recipients.

(3) The department shall issue an implementation report regarding the quality management and improvement plan and publish it on the web site of the department and provide it electronically to the Legislature on or before December 30, 2017, and March 30, 2018. Beginning in 2018, the department shall annually provide a report regarding outcomes, improvement priorities, and activities of the department during the previous fiscal year. The report shall be published on the web site of the department and shall be provided electronically to the Legislature on or before September 30.

**Source:** Laws 2017, LB333, § 8.

### **83-1216.02 Insufficient funds to provide services; department; duties.**

(1) If the department determines that there are not enough funds available to provide services to all eligible individuals under subdivision (4)(d) of section 83-1216, the department shall provide day services to individuals who:

(a) Are transitioning from the education system upon attaining twenty-one years of age on or after July 1, 2019; and

(b) Are determined by the department to be otherwise eligible for the day services in accordance with the Developmental Disabilities Services Act.

(2) The department shall provide services comparable to the day services the individual would have received pursuant to subdivision (4)(d) of section 83-1216 if funds were available.

(3) No later than September 15 of each year, the director shall provide electronic notification to the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature of the estimated number of individuals needing services under subsection (4) of section 83-1216 and the net additional resources necessary to provide services to all eligible individuals under subsection (4) of section 83-1216 other than subdivision (f) of such subsection.

(4) This section terminates June 30, 2021.

**Source:** Laws 2018, LB793, § 13.

Operative date July 19, 2018.

**83-1227 Department; prepare comprehensive plan for Beatrice State Developmental Center and Bridges program; contents; assessment of facilities; public hearing; report.**

(1) Within the framework of the best interests of persons with developmental disabilities, the department shall prepare a comprehensive plan for the Beatrice State Developmental Center and the Bridges program in Hastings, Nebraska. The plan shall include, but not be limited to:

(a) An analysis of residents of the Beatrice State Developmental Center and the Bridges program in Hastings, Nebraska, on April 8, 2016, and their needs and the ability to serve them in the community;

(b) The role of the Beatrice State Developmental Center and the Bridges program in the continuum of services offered to persons with developmental disabilities in Nebraska;

(c) The preferences of residents of the Beatrice State Developmental Center and the Bridges program and their families;

(d) Nationwide trends in facilities like the Beatrice State Developmental Center and the Bridges program;

(e) The cost efficiency of services provided at the Beatrice State Developmental Center and the Bridges program;

(f) An analysis of the facilities at the Beatrice State Developmental Center and the Bridges program on April 8, 2016, and the long-term structural needs of the facilities;

(g) Census trends and future needs for services at the Beatrice State Developmental Center and the Bridges program; and

(h) The level of community integration for residents of the Beatrice State Developmental Center and the Bridges program.

(2) The department shall prepare an assessment of the long-term viability of the facilities used to provide services at the Beatrice State Developmental Center and the facilities used to provide services through the Bridges program in Hastings, Nebraska.

(3) The department shall analyze the United States Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and provide an analysis of Nebraska's compliance with the decision.

(4) The department shall hold a public hearing to receive input from the public on the Beatrice State Developmental Center and the Bridges program.

(5) The department shall prepare a report including the plan, assessment, analysis, and results of the hearing required by subsections (1) through (4) of this section. The department shall submit the report electronically to the Legislature on or before June 1, 2017.

**Source:** Laws 2016, LB895, § 2.



## CHAPTER 84

### STATE OFFICERS

Article.

2. Attorney General. 84-218.
3. Auditor of Public Accounts. 84-304 to 84-321.
6. State Treasurer. 84-602 to 84-618.
7. General Provisions as to State Officers. 84-712.03, 84-712.05.
9. Rules of Administrative Agencies.
  - (a) Administrative Procedure Act. 84-901 to 84-920.
  - (c) Occupational Board Reform Act. 84-933 to 84-948.
12. Public Records.
  - (a) Records Management Act. 84-1205.01, 84-1227.
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13. State Employees Retirement Act. 84-1301 to 84-1325.
14. Public Meetings. 84-1411, 84-1413.
15. Public Employees Retirement Board. 84-1501 to 84-1514.
16. Nebraska State Insurance Program.
  - (a) General Provisions. 84-1613.
  - (b) Direct Primary Care Pilot Program Act. 84-1618 to 84-1627.

#### ARTICLE 2

#### ATTORNEY GENERAL

Section

84-218. Statewide model anonymous reporting protocol for health care providers.

**84-218 Statewide model anonymous reporting protocol for health care providers.**

On or before July 1, 2019, the Attorney General shall develop and distribute a statewide model anonymous reporting protocol for use by health care providers as provided in section 28-902. Once developed, the statewide model anonymous reporting protocol shall be maintained by the Nebraska Commission on Law Enforcement and Criminal Justice.

**Source:** Laws 2018, LB1132, § 4.  
Effective date July 19, 2018.

#### ARTICLE 3

#### AUDITOR OF PUBLIC ACCOUNTS

Section

- 84-304. Auditor; powers and duties; assistant deputies; qualifications; powers and duties.
- 84-304.02. Auditor; audit, financial, accounting, or retirement system plan reports; written review; copies; disposition.
- 84-305. Public entity; access to records; procedure; Auditor of Public Accounts; powers; nonpublic information shall not be made public.
- 84-305.01. Prohibited acts; penalty.
- 84-311. Reports and working papers; disclosure status; penalty.
- 84-316. Auditor of Public Accounts; powers; employees; prohibited acts; violation; penalty.
- 84-321. Auditor of Public Accounts Cash Fund; created; use.

**84-304 Auditor; powers and duties; assistant deputies; qualifications; powers and duties.**

It shall be the duty of the Auditor of Public Accounts:

(1) To give information electronically to the Legislature, whenever required, upon any subject relating to the fiscal affairs of the state or with regard to any duty of his or her office;

(2) To furnish offices for himself or herself and all fuel, lights, books, blanks, forms, paper, and stationery required for the proper discharge of the duties of his or her office;

(3)(a) To examine or cause to be examined, at such time as he or she shall determine, books, accounts, vouchers, records, and expenditures of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska, except when required to be performed by other officers or persons. Such examinations shall be done in accordance with generally accepted government auditing standards for financial audits and attestation engagements set forth in Government Auditing Standards (2011 Revision), published by the Comptroller General of the United States, Government Accountability Office, and except as provided in subdivision (10) of this section, subdivision (16) of section 50-1205, and section 84-322, shall not include performance audits, whether conducted pursuant to attestation engagements or performance audit standards as set forth in Government Auditing Standards (2011 Revision), published by the Comptroller General of the United States, Government Accountability Office.

(b) Any entity, excluding the state colleges and the University of Nebraska, that is audited or examined pursuant to subdivision (3)(a) of this section and that is the subject of a comment and recommendation in a management letter or report issued by the Auditor of Public Accounts shall, on or before six months after the issuance of such letter or report, provide to the Auditor of Public Accounts a detailed written description of any corrective action taken or to be taken in response to the comment and recommendation. The Auditor of Public Accounts may investigate and evaluate the corrective action. The Auditor of Public Accounts shall then electronically submit a report of any findings of such investigation and evaluation to the Governor, the appropriate standing committee of the Legislature, and the Appropriations Committee of the Legislature. The Auditor of Public Accounts shall also ensure that the report is delivered to the Appropriations Committee for entry into the record during the committee's budget hearing process;

(4)(a) To examine or cause to be examined, at the expense of the political subdivision, when the Auditor of Public Accounts determines such examination necessary or when requested by the political subdivision, the books, accounts, vouchers, records, and expenditures of any agricultural association formed under Chapter 2, article 20, any county agricultural society, any joint airport authority formed under the Joint Airport Authorities Act, any city or county airport authority, any bridge commission created pursuant to section 39-868, any cemetery district, any community redevelopment authority or limited community redevelopment authority established under the Community Development Law, any development district, any drainage district, any health district, any local public health department as defined in section 71-1626, any

historical society, any hospital authority or district, any county hospital, any housing agency as defined in section 71-1575, any irrigation district, any county or municipal library, any community mental health center, any railroad transportation safety district, any rural water district, any township, Wyuka Cemetery, the Educational Service Unit Coordinating Council, any entity created pursuant to the Interlocal Cooperation Act, any educational service unit, any village, any service contractor or subrecipient of state or federal funds, any political subdivision with the authority to levy a property tax or a toll, or any entity created pursuant to the Joint Public Agency Act.

For purposes of this subdivision, service contractor or subrecipient means any nonprofit entity that expends state or federal funds to carry out a state or federal program or function, but it does not include an individual who is a direct beneficiary of such a program or function or a licensed health care provider or facility receiving direct payment for medical services provided for a specific individual.

(b) The Auditor of Public Accounts may waive the audit requirement of subdivision (4)(a) of this section upon the submission by the political subdivision of a written request in a form prescribed by the auditor. The auditor shall notify the political subdivision in writing of the approval or denial of the request for a waiver.

(c) Through December 31, 2017, the Auditor of Public Accounts may conduct audits under this subdivision for purposes of sections 2-3228, 12-101, 13-2402, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987.

(d) Beginning on May 24, 2017, the Auditor of Public Accounts may conduct audits under this subdivision for purposes of sections 13-2402, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 71-1631.02, and 79-987 and shall prescribe the form for the annual reports required in each of such sections. Such annual reports shall be published annually on the web site of the Auditor of Public Accounts;

(5) To report promptly to the Governor and the appropriate standing committee of the Legislature the fiscal condition shown by such examinations conducted by the auditor, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts. The report submitted to the committee shall be submitted electronically. In addition, if, in the normal course of conducting an audit in accordance with subdivision (3) of this section, the auditor discovers any potential problems related to the effectiveness, efficiency, or performance of state programs, he or she shall immediately report them electronically to the Legislative Performance Audit Committee which may investigate the issue further, report it electronically to the appropriate standing committee of the Legislature, or both;

(6)(a) To examine or cause to be examined the books, accounts, vouchers, records, and expenditures of a fire protection district. The expense of the examination shall be paid by the political subdivision.

(b) Whenever the expenditures of a fire protection district are one hundred fifty thousand dollars or less per fiscal year, the fire protection district shall be audited no more than once every five years except as directed by the board of directors of the fire protection district or unless the auditor receives a verifiable report from a third party indicating any irregularities or misconduct of officers

or employees of the fire protection district, any misappropriation or misuse of public funds or property, or any improper system or method of bookkeeping or condition of accounts of the fire protection district. In the absence of such a report, the auditor may waive the five-year audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver of the five-year audit requirement. Upon approval of the request for waiver of the five-year audit requirement, a new five-year audit period shall begin.

(c) Whenever the expenditures of a fire protection district exceed one hundred fifty thousand dollars in a fiscal year, the auditor may waive the audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver. Upon approval of the request for waiver, a new five-year audit period shall begin for the fire protection district if its expenditures are one hundred fifty thousand dollars or less per fiscal year in subsequent years;

(7) To appoint two or more assistant deputies (a) whose entire time shall be devoted to the service of the state as directed by the auditor, (b) who shall be certified public accountants with at least five years' experience, (c) who shall be selected without regard to party affiliation or to place of residence at the time of appointment, (d) who shall promptly report to the auditor the fiscal condition shown by each examination, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts, and it shall be the duty of the auditor to file promptly with the Governor a duplicate of such report, and (e) who shall qualify by taking an oath which shall be filed in the office of the Secretary of State;

(8) To conduct audits and related activities for state agencies, political subdivisions of this state, or grantees of federal funds disbursed by a receiving agency on a contractual or other basis for reimbursement to assure proper accounting by all such agencies, political subdivisions, and grantees for funds appropriated by the Legislature and federal funds disbursed by any receiving agency. The auditor may contract with any political subdivision to perform the audit of such political subdivision required by or provided for in section 23-1608 or 79-1229 or this section and charge the political subdivision for conducting the audit. The fees charged by the auditor for conducting audits on a contractual basis shall be in an amount sufficient to pay the cost of the audit. The fees remitted to the auditor for such audits and services shall be deposited in the Auditor of Public Accounts Cash Fund;

(9) To develop and maintain an annual budget and actual financial information reporting system for political subdivisions that is accessible online by the public;

(10) When authorized, to conduct joint audits with the Legislative Performance Audit Committee as described in section 50-1205; and

(11) Unless otherwise specifically provided, to assess the interest rate on delinquent payments of any fees for audits and services owing to the Auditor of Public Accounts at a rate of fourteen percent per annum from the date of billing unless paid within thirty days after the date of billing. For an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, any

participating public agencies shall be jointly and severally liable for the fees and interest owed if such entity is defunct or unable to pay.

**Source:** R.S.1866, c. 4, § 4, p. 20; Laws 1907, c. 140, § 1, p. 447; R.S.1913, § 5546; C.S.1922, § 4848; C.S.1929, § 84-304; Laws 1939, c. 28, § 4, p. 142; C.S.Supp.,1941, § 84-304; R.S.1943, § 84-304; Laws 1951, c. 339, § 1, p. 1121; Laws 1953, c. 322, § 2, p. 1065; Laws 1965, c. 538, § 30, p. 1715; Laws 1965, c. 459, § 26, p. 1465; Laws 1967, c. 36, § 8, p. 164; Laws 1974, LB 280, § 3; Laws 1976, LB 759, § 2; Laws 1977, LB 193, § 4; Laws 1979, LB 414, § 5; Laws 1984, LB 473, § 25; Laws 1985, Second Spec. Sess., LB 29, § 5; Laws 1987, LB 183, § 6; Laws 1992, LB 573, § 14; Laws 1993, LB 579, § 4; Laws 1993, LB 516, § 4; Laws 1995, LB 205, § 1; Laws 1995, LB 509, § 1; Laws 1995, LB 572, § 1; Laws 1996, LB 900, § 1069; Laws 1997, LB 250, § 24; Laws 2000, LB 968, § 84; Laws 2000, LB 1304, § 1; Laws 2002, LB 568, § 11; Laws 2003, LB 607, § 20; Laws 2004, LB 1005, § 136; Laws 2004, LB 1118, § 3; Laws 2006, LB 588, § 10; Laws 2007, LB603, § 31; Laws 2008, LB822, § 4; Laws 2012, LB782, § 222; Laws 2013, LB40, § 3; Laws 2014, LB759, § 21; Laws 2015, LB539, § 8; Laws 2017, LB151, § 8; Laws 2017, LB415, § 45.

#### Cross References

**Community Development Law**, see section 18-2101.

**Interlocal Cooperation Act**, see section 13-801.

**Joint Airport Authorities Act**, see section 3-716.

**Joint Public Agency Act**, see section 13-2501.

**Successors**, duties relating to, see section 84-604.

**Tax returns**, audited when, see section 77-27,119.

### **84-304.02 Auditor; audit, financial, accounting, or retirement system plan reports; written review; copies; disposition.**

The Auditor of Public Accounts, or a person designated by him or her, may prepare a written review of all audit, accounting, or financial reports required to be filed by a political subdivision of the state with the Auditor of Public Accounts and of public retirement system plan reports required to be submitted to the Auditor of Public Accounts pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, 79-987, and 84-304 and cause one copy of such written review to be mailed to the political subdivision involved and one copy to the accountant who prepared the report. Such written review shall specifically set forth wherein the audit, accounting, financial, or retirement system plan report fails to comply with the applicable minimum standards and the necessary action to be taken to bring the report into compliance with such standards. The Auditor of Public Accounts may, upon continued failure to comply with such standards, refuse to accept for filing an audit, accounting, financial, or retirement system plan report or any future report submitted for filing by any political subdivision.

**Source:** Laws 1974, LB 922, § 2; Laws 1993, LB 310, § 16; Laws 2011, LB474, § 13; Laws 2015, LB539, § 9; Laws 2017, LB415, § 46.

### **84-305 Public entity; access to records; procedure; Auditor of Public Accounts; powers; nonpublic information shall not be made public.**

(1) The Auditor of Public Accounts shall have access to any and all information and records, confidential or otherwise, of any public entity, in whatever form or mode the records may be, unless the auditor is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the public entity shall provide the auditor with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the auditor access to all information and records or portions thereof that can legally be reviewed.

(2) Upon receipt of a written request by the Auditor of Public Accounts for access to any information or records, the public entity shall provide to the auditor 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 auditor to modify or prioritize the items within the request. No delay due to the significant difficulty or the extensiveness of any request for access to information or records shall exceed three calendar weeks after actual receipt of such request by any public entity. 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) When any employee of the Auditor of Public Accounts conducts an audit or examination of any public entity, the public entity shall provide suitable accommodations for such employee of the auditor at the location where the requested information and records are kept or stored. Such accommodations shall include desks or tables and chairs, electrical outlets, and Internet access if such access is available.

(4) The Auditor of Public Accounts may issue subpoenas to 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.

(5) In case of disobedience on the part of any person to comply with any subpoena issued by the Auditor of Public Accounts 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 the Auditor of Public Accounts, 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.

(6) If a witness refuses to testify before the Auditor of Public Accounts on the basis of the privilege against self-incrimination, the Auditor of Public Accounts may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

(7) No provisions of state law shall be construed to change the nonpublic nature of the data obtained as a result of the access. When an audit or investigative finding emanates from nonpublic data which is nonpublic pursu-

ant to federal or state law, all the nonpublic information shall not be made public.

**Source:** Laws 1995, LB 509, § 4; Laws 2015, LB539, § 10; Laws 2017, LB151, § 9.

#### **84-305.01 Prohibited acts; penalty.**

Any person who willfully fails to comply with the provisions of section 84-305 or who otherwise willfully obstructs or hinders the conduct of an audit, examination, or related activity by the Auditor of Public Accounts or who willfully misleads or attempts to mislead any person charged with the duty of conducting such audit, examination, or related activity shall be guilty of a Class II misdemeanor.

**Source:** Laws 2015, LB539, § 11.

#### **84-311 Reports and working papers; disclosure status; penalty.**

(1)(a) All final audit reports issued by the Auditor of Public Accounts shall be maintained permanently as a public record in the office of the Auditor of Public Accounts.

(b) Working papers and other audit files maintained by the Auditor of Public Accounts are not public records and are exempt from sections 84-712 to 84-712.05. The information contained in working papers and audit files prepared pursuant to a specific audit is not subject to disclosure except to a county attorney or the Attorney General in connection with an investigation made or action taken in the course of the attorney's official duties or to the Legislative Performance Audit Committee in the course of the committee's official duties and pursuant to the requirements of subdivision (16) of section 50-1205 or subdivision (5) of section 84-304.

(c) A public entity being audited and any federal agency that has made a grant to such public entity shall also have access to the relevant working papers and audit files, except that such access shall not include information that would disclose or otherwise indicate the identity of any individual who has confidentially provided the Auditor of Public Accounts with allegations of wrongdoing regarding, or other information pertaining to, the public entity being audited.

(d) The Auditor of Public Accounts may, at his or her discretion, share working papers, other than personal information and telephone records, with the Legislative Council. The Auditor of Public Accounts may, at his or her discretion, share working papers with the Attorney General, the Internal Revenue Service, the Tax Commissioner, the Federal Bureau of Investigation, a law enforcement agency as defined in section 28-359, and the Nebraska Accountability and Disclosure Commission. The working papers may be shared with such entities during an ongoing audit or after the final audit report is issued. The Auditor of Public Accounts shall not, under the authority granted in this subdivision, reveal sealed or confidential court records contained in working papers.

(e) For purposes of this subsection, working papers means those documents containing evidence to support the auditor's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the auditor during the audit.

(f) The Auditor of Public Accounts 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 under this section when in the possession of the Auditor of Public Accounts.

(2) If the Auditor of Public Accounts or any employee of the Auditor of Public Accounts knowingly divulges or makes known in any manner not permitted by law any record, document, or information, the disclosure of which is restricted by law, he or she is subject to the same penalties provided in section 84-712.09.

**Source:** Laws 1995, LB 509, § 5; Laws 2004, LB 902, § 1; Laws 2006, LB 588, § 11; Laws 2015, LB539, § 12; Laws 2017, LB151, § 10.

**84-316 Auditor of Public Accounts; powers; employees; prohibited acts; violation; penalty.**

(1) The Auditor of Public Accounts may decide not to include in any document that will be a public record the names of persons providing information to the Auditor of Public Accounts.

(2) No employee of the State of Nebraska or any of its political subdivisions who provides information to the Auditor of Public Accounts shall be subject to any personnel action, as defined in section 81-2703, in connection with his or her employment as a result of providing 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 or political subdivision.

**Source:** Laws 2015, LB539, § 13.

**84-321 Auditor of Public Accounts Cash Fund; created; use.**

There is hereby created in the office of the Auditor of Public Accounts a cash fund to be known as the Auditor of Public Accounts Cash Fund. The fund shall be used for payment for services performed by the Auditor of Public Accounts for state agencies, political subdivisions, and grantees of federal funds disbursed by a receiving agency for which he or she is entitled to reimbursement on a contractual or other basis for such reimbursement.

**Source:** Laws 1972, LB 1283, § 1; Laws 1976, LB 759, § 3; Laws 2017, LB151, § 11.

**ARTICLE 6**

**STATE TREASURER**

Section

- 84-602. State Treasurer; duties.
- 84-602.01. Taxpayer Transparency Act.
- 84-602.02. Transferred to section 84-602.04.
- 84-602.03. Taxpayer Transparency Act; terms, defined.
- 84-602.04. Taxpayer Transparency Act; web site; contents; link to Department of Administrative Services web site; contents; actions by state entity prohibited; Department of Administrative Services; duties.
- 84-612. Cash Reserve Fund; created; transfers; receipt of federal funds.



Section

84-618. Treasury Management Cash Fund; created; use; investment.

**84-602 State Treasurer; duties.**

It shall be the duty of the State Treasurer:

(1) To receive and keep all money of the state not expressly required to be received and kept by some other person;

(2) To disburse the public money upon warrants drawn upon the state treasury according to law and not otherwise;

(3) To keep a just, true, and comprehensive account of all money received and disbursed;

(4) To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them;

(5) To render a full statement to the Department of Administrative Services of all money received by him or her from whatever source, and if on account of revenue, for what year; of all penalties and interest on delinquent taxes reported or accounted for to him or her, and of all disbursements of public funds; with a list, in numerical order, of all warrants redeemed, the name of the payee, amount, interest, and total amount allowed thereon, and with the amount of the balance of the several funds unexpended; which statement shall be made on the first day of December, March, June, and September, and more often if required;

(6) To report electronically to the Legislature as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury and its operations for the preceding fiscal year;

(7) To give information electronically to the Legislature, whenever required, upon any subject connected with the treasury or touching any duty of his or her office;

(8) To account for, and pay over, all money received by him or her as such treasurer, to his or her successor in office, and deliver all books, vouchers, and effects of office to him or her; and such successor shall receipt therefor. In accounting for and paying over such money the treasurer shall not be held liable on account of any loss occasioned by any investment, when such investment shall have been made pursuant to the direction of the state investment officer; and

(9) To develop and maintain the web site required under the Taxpayer Transparency Act.

**Source:** R.S.1866, c. 4, § 18, p. 24; R.S.1913, § 5577; C.S.1922, § 4881; C.S.1929, § 84-602; R.S.1943, § 84-602; Laws 1967, c. 617, § 1, p. 2069; Laws 1970, Spec. Sess., c. 3, § 1, p. 67; Laws 2009, LB16, § 2; Laws 2012, LB782, § 224; Laws 2013, LB429, § 1; Laws 2016, LB851, § 1.

**Cross References**

Taxpayer Transparency Act, see section 84-602.01.

**84-602.01 Taxpayer Transparency Act.**

Sections 84-602.01 to 84-602.04 shall be known and may be cited as the Taxpayer Transparency Act.

**Source:** Laws 2009, LB16, § 1; Laws 2016, LB851, § 2.

**84-602.02 Transferred to section 84-602.04.**

**84-602.03 Taxpayer Transparency Act; terms, defined.**

For purposes of the Taxpayer Transparency Act:

(1)(a) Expenditure of state funds means all expenditures of state receipts, whether appropriated or nonappropriated, by a state entity in forms including, but not limited to:

(i) Grants;

(ii) Contracts;

(iii) Subcontracts;

(iv) State aid to political subdivisions;

(v) Tax refunds or credits that may be disclosed pursuant to the Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Nebraska Advantage Rural Development Act; and

(vi) Any other disbursement of state receipts by a state entity in the performance of its functions;

(b) Expenditure of state funds includes expenditures authorized by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or a public corporation pursuant to sections 85-403 to 85-411; and

(c) Expenditure of state funds does not include the transfer of funds between two state entities, payments of state, federal, or other assistance to an individual, or the expenditure of pass-through funds;

(2) Pass-through funds means any funds received by a state entity if the state entity is acting only as an intermediary or custodian with respect to such funds and is obligated to pay or otherwise return such funds to the person entitled thereto;

(3) State entity means (a) any agency, board, commission, or department of the state and (b) any other body created by state statute that includes a person appointed by the Governor, the head of any state agency or department, an employee of the State of Nebraska, or any combination of such persons and that is empowered pursuant to such statute to collect and disburse state receipts; and

(4) State receipts means revenue or other income received by a state entity from tax receipts, fees, charges, interest, or other sources which is (a) used by the state entity to pay the expenses necessary to perform the state entity's functions and (b) reported to the State Treasurer in total amounts by category of income. State receipts does not include pass-through funds.

**Source:** Laws 2016, LB851, § 3.

**Cross References**

**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.

**84-602.04 Taxpayer Transparency Act; web site; contents; link to Department of Administrative Services web site; contents; actions by state entity prohibited; Department of Administrative Services; duties.**

(1) The State Treasurer shall develop and maintain a single, searchable web site with information on state receipts, expenditures of state funds, and contracts which is accessible by the public at no cost to access as provided in this section. The web site shall be hosted on a server owned and operated by the State of Nebraska or approved by the Chief Information Officer. The naming convention for the web site shall identify the web site as a state government web site. The web site shall not include the treasurer's name, the treasurer's image, the treasurer's seal, or a welcome message.

(2)(a) The web site established, developed, and maintained by the State Treasurer pursuant to this section shall provide such information as will document the sources of all state receipts and the expenditure of state funds by all state entities.

(b) The State Treasurer shall, in appropriate detail, cause to be published on the web site:

(i) The identity, principal location, and amount of state receipts received or expended by the State of Nebraska and all of its state entities;

(ii) The funding or expending state entity;

(iii) The budget program source;

(iv) The amount, date, purpose, and recipient of all expenditures of state funds; and

(v) Such other relevant information as will further the intent of enhancing the transparency of state government financial operations to its citizens and taxpayers. The web site shall include data for fiscal year 2008-09 and each fiscal year thereafter, except that for any state entity that becomes subject to this section due to the changes made by Laws 2016, LB851, the web site shall include data for such state entity for fiscal year 2016-17 and each fiscal year thereafter.

(3) The data shall be available on the web site no later than thirty days after the end of the preceding fiscal year.

(4)(a) The web site described in this section shall include a link to the web site of the Department of Administrative Services. The department's web site shall contain:

(i) A data base that includes a copy of each active contract that is a basis for an expenditure of state funds, including any amendment to such contract and any document incorporated by reference in such contract. For purposes of this subdivision, amendment means an agreement to modify a contract which has been reduced to writing and signed by each party to the contract, an agreement to extend the duration of a contract, or an agreement to renew a contract. The data base shall be accessible by the public and searchable by vendor, by state entity, and by dollar amount. All state entities shall provide to the Department of Administrative Services, in electronic form, copies of such contracts for inclusion in the data base beginning with contracts that are active on and after January 1, 2014, except that for any state entity that becomes subject to this

section due to the changes made by Laws 2016, LB851, such state entity shall provide copies of such contracts for inclusion in the data base beginning with contracts that are active on and after January 1, 2017; and

(ii) A data base that includes copies of all expired contracts which were previously included in the data base described in subdivision (4)(a)(i) of this section and which have not been disposed of pursuant to policies and procedures adopted under subdivision (4)(e) of this section. The data base required under this subdivision shall be accessible by the public and searchable by vendor, by state entity, and by dollar amount.

(b) The following shall be redacted or withheld from any contract before such contract is included in a data base pursuant to subdivision (4)(a) of this section:

(i) The social security number or federal tax identification number of any individual or business;

(ii) Protected health information as such term is defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2013;

(iii) Any information which may be withheld from the public under section 84-712.05; or

(iv) Any information that is confidential under state or federal law, rule, or regulation.

(c) The following contracts shall be exempt from the requirements of subdivision (4)(a) of this section:

(i) Contracts entered into by the Department of Health and Human Services that are letters of agreement for the purpose of providing specific services to a specifically named individual and his or her family;

(ii) Contracts entered into by the University of Nebraska or any of the Nebraska state colleges for the purpose of providing specific services or financial assistance to a specifically named individual and his or her family;

(iii) Contracts entered into by the Department of Veterans' Affairs under section 80-401 or 80-403 for the purpose of providing aid to a specifically named veteran and his or her family;

(iv) Contracts entered into by the State Energy Office for the purpose of providing financing from the Dollar and Energy Saving Loan program;

(v) Contracts entered into by the State Department of Education under sections 79-11,121 to 79-11,132 for the purpose of providing specific goods, services, or financial assistance on behalf of or to a specifically named individual;

(vi) Contracts of employment for employees of any state entity. The exemption provided in this subdivision shall not apply to contracts entered into by any state entity to obtain the services of an independent contractor; and

(vii) Contracts entered into by the Nebraska Investment Finance Authority for the purpose of providing a specific service or financial assistance, including, but not limited to, a grant or loan, to a specifically named individual and his or her family.

(d) No state entity shall structure a contract to avoid any of the requirements of subdivision (4)(a) of this section.

(e) The Department of Administrative Services shall adopt policies and procedures regarding the creation, maintenance, and disposal of records pursu-

ant to section 84-1212.02 for the contracts contained in the data bases required under this section and the process by which state entities provide copies of the contracts required under this section.

(5) All state entities shall provide to the State Treasurer, at such times and in such form as designated by the State Treasurer, such information as is necessary to accomplish the purposes of the Taxpayer Transparency Act.

(6) Nothing in this section requires the disclosure of information which is considered confidential under state or federal law or is not a public record under section 84-712.05.

**Source:** Laws 2009, LB16, § 3; Laws 2013, LB429, § 2; Laws 2015, LB541, § 1; R.S.Supp.,2015, § 84-602.02; Laws 2016, LB694, § 1; Laws 2016, LB851, § 4.

**84-612 Cash Reserve Fund; created; transfers; receipt of federal funds.**

(1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(4) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer not to exceed forty million seven hundred fifteen thousand four hundred fifty-nine dollars in total from the Cash Reserve Fund to the Nebraska Capital Construction Fund between July 1, 2013, and June 30, 2018.

(5) The State Treasurer shall transfer the following amounts from the Cash Reserve Fund to the Nebraska Capital Construction Fund on such dates as directed by the budget administrator of the budget division of the Department of Administrative Services:

(a) Seven million eight hundred four thousand two hundred ninety-two dollars on or after June 15, 2016, but before June 30, 2016;

(b) Five million fifty-eight thousand four hundred five dollars on or after July 1, 2018, but before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services; and

(c) Fifteen million three hundred seventy-eight thousand three hundred nine dollars on or after January 1, 2019, but before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(6) The State Treasurer shall transfer seventy-five million two hundred fifteen thousand three hundred thirteen dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund on or before July 31, 2017, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(7) The State Treasurer shall transfer thirty-one million dollars from the Cash Reserve Fund to the General Fund after July 1, 2017, but before July 15, 2017, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(8) The State Treasurer shall transfer thirty-one million dollars from the Cash Reserve Fund to the General Fund after October 1, 2017, but before October 15, 2017, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(9) The State Treasurer shall transfer thirty-one million dollars from the Cash Reserve Fund to the General Fund after January 1, 2018, but before January 15, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(10) The State Treasurer shall transfer thirty-two million dollars from the Cash Reserve Fund to the General Fund after April 1, 2018, but before April 15, 2018, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(11) The State Treasurer shall transfer one hundred million dollars from the Cash Reserve Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

(12) The State Treasurer shall transfer forty-eight million dollars from the Cash Reserve Fund to the General Fund after March 1, 2019, but before March 15, 2019, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 1983, LB 59, § 5; Laws 1985, LB 713, § 2; Laws 1985, LB 501, § 2; Laws 1986, LB 739, § 1; Laws 1986, LB 870, § 1; Laws 1987, LB 131, § 1; Laws 1988, LB 1091, § 4; Laws 1989, LB 310, § 1; Laws 1991, LB 857, § 1; Laws 1991, LB 783, § 33; Laws 1992, LB 1268, § 1; Laws 1993, LB 38, § 4; Laws 1994, LB 1045, § 1; Laws 1996, LB 1290, § 6; Laws 1997, LB 401, § 5; Laws 1998, LB 63, § 1; Laws 1998, LB 988, § 1; Laws 1998, LB 1104, § 30; Laws 1998, LB 1134, § 5; Laws 1998, LB 1219, § 23; Laws 1999, LB 881, § 9; Laws 2000, LB 1214, § 2; Laws 2001, LB 541, § 6; Laws 2002, LB 1310, § 20; Laws 2003, LB 790, § 74; Laws 2003, LB 798, § 1; Laws 2004, LB 1090, § 2; Laws 2005, LB 427, § 2; Laws 2006, LB 1131, § 1; Laws 2006, LB 1256, § 9; Laws 2007, LB323, § 3; Laws 2008, LB846, § 21; Laws 2008, LB1094, § 8; Laws 2008, LB1116, § 9; Laws 2008, LB1165, § 2; Laws 2009, LB456, § 3; Laws 2009, First Spec. Sess., LB2, § 7; Laws 2010, LB317, § 1; Laws 2011, LB379, § 2; Laws 2012, LB131, § 1; Laws 2013, LB200, § 1; Laws 2014, LB130, § 2; Laws 2014, LB1016, § 3; Laws 2015, LB662, § 1; Laws 2016, LB957, § 13; Laws 2016, LB960, § 31; Laws 2017, LB332, § 1; Laws 2018, LB946, § 1.

Effective date April 5, 2018.

**84-618 Treasury Management Cash Fund; created; use; investment.**

(1) The Treasury Management Cash Fund is created. A pro rata share of the budget appropriated for the treasury management functions of the State Treasurer and for the administration of the achieving a better life experience program as provided in sections 77-1401 to 77-1409 shall be charged to the income of each fund held in invested cash, and such charges shall be transferred to the Treasury Management Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the State Treasurer in carrying out the treasury management functions under section 84-602 and in carrying out the achieving a better life experience program as provided in sections 77-1401 to 77-1409. Approval of the agencies, boards, and commissions administering these funds shall not be required.

(2) It is the intent of this section to have funds held in invested cash be charged a pro rata share of such expenses when this is not prohibited by statute or the Constitution of Nebraska.

(3) The Treasury Management Cash Fund shall be used for the treasury management functions of the State Treasurer and for the administration of the achieving a better life experience program as provided in sections 77-1401 to 77-1409. To the extent permitted by section 529A as defined in section 77-1401, the fund may receive gifts for administration, operation, and maintenance of a program established under sections 77-1403 to 77-1409.

(4) Transfers may be made from the Treasury Management Cash Fund to the General Fund at the direction of the Legislature. Any money in the Treasury 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.

**Source:** Laws 2003, LB 424, § 1; Laws 2015, LB591, § 15.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 7****GENERAL PROVISIONS AS TO STATE OFFICERS****Section**

84-712.03. Public records; denial of rights; remedies.

84-712.05. Records which may be withheld from the public; enumerated.

**84-712.03 Public records; denial of rights; remedies.**

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(a) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(b) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections, including whether the fees estimated or charged by the custodian are actual

added costs or special service charges as provided under section 84-712. This determination shall be made within fifteen calendar days after the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (i) bring suit in the trial court of general jurisdiction or (ii) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days after its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

(2) In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses, may be permitted to view the records, subject to necessary protective orders.

(3) Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the trial docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

**Source:** Laws 1961, c. 454, § 5, p. 1384; Laws 1977, LB 39, § 316; Laws 1979, LB 86, § 3; Laws 2000, LB 628, § 3; Laws 2013, LB363, § 2; Laws 2018, LB193, § 93.  
Operative date July 19, 2018.

#### **84-712.05 Records which may be withheld from the public; enumerated.**

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on February 1, 2013, and regulations adopted thereunder;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;



(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment if, after an investigation is concluded, a family member of the deceased employee makes a request for access to or copies of such records. This subdivision does not require access to or copies of informant identification, the names or identifying information of citizens making complaints or inquiries, other information which would compromise an ongoing criminal investigation, or information which may be withheld from the public under another provision of law. For purposes of this subdivision, family member means a spouse, child, parent, brother, sister, grandchild, or grandparent by blood, marriage, or adoption;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists or a priority candidate for a position described in section 85-106.06 selected using the enhanced public scrutiny process in section 85-106.06, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant who is not an applicant for a position described in section 85-106.06 and (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants;

(16) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512;

(17) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens;

(18) Information exchanged between a jurisdictional utility and city pursuant to section 66-1867;

(19) Draft records obtained by the Nebraska Retirement Systems Committee of the Legislature and the Governor from Nebraska Public Employees Retirement Systems pursuant to subsection (4) of section 84-1503;

(20) All prescription drug information submitted pursuant to section 71-2454, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system; and

(21) Information obtained by any government entity, whether federal, state, county, or local, regarding firearm registration, possession, sale, or use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by such entity. Such information shall be available upon request to any federal, state, county, or local law enforcement agency.

**Source:** Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1; Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6; Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2; Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88; Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6; Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7; Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3; Laws 2005, LB 361, § 37; Laws 2007, LB389, § 1; Laws 2009, LB188, § 8; Laws 2009, LB658, § 7; Laws 2011, LB230, § 1; Laws 2013, LB410, § 17; Laws 2016, LB447, § 45; Laws 2016, LB471, § 3; Laws 2016, LB1109, § 1; Laws 2018, LB859, § 1; Laws 2018, LB902, § 1. Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB859, section 1, with LB902, section 1, to reflect all amendments.

#### Cross References

**Patient Safety Improvement Act**, see section 71-8701.

**Unmarked Human Burial Sites and Skeletal Remains Protection Act**, see section 12-1201.

## ARTICLE 9

### RULES OF ADMINISTRATIVE AGENCIES

#### (a) ADMINISTRATIVE PROCEDURE ACT

##### Section

- 84-901. Terms, defined.
- 84-901.01. Adoption and promulgation of rules and regulations; time; failure to adopt and promulgate; explanation; contents; hearing by standing committee of the Legislature; effect of legislative changes.
- 84-901.02. Legislative findings.
- 84-901.03. Agency; guidance document; issuance; availability; notice; request to revise or repeal; response; agency publish index.
- 84-901.04. Emergency rule or regulation; factors; procedure; duration; renewal; filing; publication.
- 84-902. Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.
- 84-906. Rule or regulation; when valid; presumption; limitation of action.
- 84-906.03. Secretary of State; duties.
- 84-906.04. Secretary of State; maintain docket for pending proceedings; contents.
- 84-907. Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure; exemption.
- 84-907.01. Repealed. Laws 2016, LB867, § 21.
- 84-907.02. Repealed. Laws 2016, LB867, § 21.
- 84-907.03. Secretary of State Administration Cash Fund; created; use; investment.
- 84-907.06. Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council and Secretary of State.
- 84-907.07. Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.

## Section

- 84-907.09. Adoption, amendment, or repeal of rule or regulation; provide information to Governor.
- 84-908. Rule or regulation; adoption; amendment; repeal; considerations; when effective; approval by Governor; filing.
- 84-910. Agency; notification to Legislative Performance Audit Committee; contents; format; notice to Executive Board of the Legislative Council.
- 84-920. Act, how cited.

## (c) OCCUPATIONAL BOARD REFORM ACT

- 84-933. Act, how cited.
- 84-934. Definitions, where found.
- 84-935. Government certification, defined.
- 84-936. Lawful occupation, defined.
- 84-937. Least restrictive regulation, defined.
- 84-938. Occupational board, defined.
- 84-939. Occupational license, defined.
- 84-940. Occupational regulation, defined.
- 84-941. Personal qualifications, defined.
- 84-942. Private certification, defined.
- 84-943. Provider, defined.
- 84-944. Registration, defined.
- 84-945. Use of terms certification, certified, registration, and registered; how construed.
- 84-946. Statement of policy.
- 84-947. Individual with criminal conviction; submit preliminary application; occupational board; duties; determination; appeal; fee.
- 84-948. Standing committee of Legislature; duties; report; contents.

## (a) ADMINISTRATIVE PROCEDURE ACT

**84-901 Terms, defined.**

For purposes of the Administrative Procedure Act:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the act;

(2) Rule or regulation shall mean any standard of general application adopted by an agency in accordance with the authority conferred by statute and includes, but is not limited to, the amendment or repeal of a rule or regulation. Rule or regulation shall not include (a) internal procedural documents which provide guidance to staff on agency organization and operations, lacking the force of law, and not relied upon to bind the public, (b) guidance documents as issued by an agency in accordance with section 84-901.03, and (c) forms and instructions developed by an agency. For purposes of the act, every standard which prescribes a penalty shall be presumed to have general applicability and any standard affecting private rights, private interests, or procedures available to the public is presumed to be relied upon to bind the public. Nothing in this section shall be interpreted to require an agency to adopt and promulgate rules and regulations when statute authorizes but does not require it;

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing;

(4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:

- (a) Communications which do not pertain to the merits of a contested case;
- (b) Communications required for the disposition of ex parte matters as authorized by law;
- (c) Communications in a ratemaking or rulemaking proceeding; and
- (d) Communications to which all parties have given consent;

(5) Guidance document shall mean any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rules or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy. Internal procedural documents which provide guidance to staff on agency organization and operations shall not be considered guidance documents; and

(6) Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the act, whether designated as the presiding officer, administrative law judge, or some other title designation.

**Source:** Laws 1945, c. 255, § 1, p. 795; Laws 1947, c. 350, § 1, p. 1097; Laws 1951, c. 342, § 1, p. 1128; Laws 1959, c. 456, § 1, p. 1510; Laws 1974, LB 819, § 11; Laws 1978, LB 44, § 1; Laws 1981, LB 130, § 1; Laws 1986, LB 992, § 1; Laws 1987, LB 253, § 1; Laws 1994, LB 414, § 135; Laws 1994, LB 446, § 14; Laws 2016, LB867, § 4; Laws 2017, LB209, § 1.

**84-901.01 Adoption and promulgation of rules and regulations; time; failure to adopt and promulgate; explanation; contents; hearing by standing committee of the Legislature; effect of legislative changes.**

(1) When legislation is enacted requiring the adoption and promulgation of rules and regulations by an agency, such agency shall adopt and promulgate such rules and regulations within one year after the public hearing required under subsection (2) of section 84-907. Such time shall not include the time necessary for submission of the rules and regulations to the Attorney General pursuant to section 84-905.01 or submission of the rules and regulations to the Governor pursuant to section 84-908. Any agency which does not adopt and promulgate such rules and regulations as required by this section shall, upon request, submit an explanation to the Executive Board of the Legislative Council and the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the legislation, stating the reasons why it has not adopted such rules and regulations as required by this section, the date by which the agency expects to adopt such rules and regulations, and any suggested statutory changes that may enable the agency to adopt such rules and regulations.

(2) If such agency has not adopted and promulgated such rules and regulations within three years after the operative or effective date of such enacting

legislation, the standing committee of the Legislature which has subject matter jurisdiction over the matters included in the legislation shall hold a public hearing to determine the reason that such rules and regulations have not been enacted.

(3) The changes made to the Administrative Procedure Act by Laws 2011, LB617, shall not affect the validity or effectiveness of a rule or regulation adopted prior to May 25, 2011.

(4) The changes made to this section by Laws 2013, LB242, shall apply to legislation enacted before, on, or after September 6, 2013.

**Source:** Laws 2011, LB617, § 1; Laws 2012, LB782, § 227; Laws 2013, LB222, § 42; Laws 2013, LB242, § 2; Laws 2018, LB751, § 1.  
Effective date July 19, 2018.

#### **84-901.02 Legislative findings.**

The Legislature finds that:

(1) The regulatory authority given to agencies has a significant impact on the people of the state;

(2) When agencies create substantive standards by which Nebraskans are expected to abide, it is essential that those standards be adopted through the rules and regulations process to enable the public to be aware of the standards and have an opportunity to participate in the approval or repeal process;

(3) Agencies should be encouraged to advise the public of current opinions, interpretations, approaches, and likely courses of action by means of guidance documents; and

(4) Oversight of the regulatory authority over occupations and professions given to agencies is required to ensure respect for the fundamental right of an individual to pursue an occupation.

**Source:** Laws 2016, LB867, § 3; Laws 2018, LB299, § 17.  
Operative date July 1, 2019.

#### **84-901.03 Agency; guidance document; issuance; availability; notice; request to revise or repeal; response; agency publish index.**

(1) Upon the issuance of a guidance document, an agency shall make such document available at one public location and on the agency's web site. The agency shall also publish on its web site an index summarizing the subject matter of all currently applicable rules and regulations and guidance documents. Such agency shall provide the index electronically to the Clerk of the Legislature by December 31 of each year.

(2) An agency shall ensure that the first page of each guidance document includes the following notice: This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

(3) A person may request in writing that an agency revise or repeal a guidance document or convert a guidance document into a rule or regulation. No later than sixty calendar days after the agency receives such a request, the agency shall advise the requestor in writing of its decision to (a) revise or repeal the guidance document, (b) initiate a proceeding to consider a revision or repeal of a guidance document, (c) initiate the rulemaking or regulationmaking process to convert the guidance document into a rule or regulation, or (d) deny the request and state the reason for the denial.

(4) All decisions made by an agency under this section shall be made available at one public location and on the agency's web site.

**Source:** Laws 2016, LB867, § 5; Laws 2017, LB209, § 2.

**84-901.04 Emergency rule or regulation; factors; procedure; duration; renewal; filing; publication.**

(1) If an agency determines that the adoption, amendment, or repeal of a rule or regulation is necessitated by an emergency situation, the agency may adopt, amend, or repeal a rule or regulation upon approval of the Governor. Such agency's request shall be submitted to the Governor in writing and include a justification as to why the emergency rule or regulation is necessary. Factors for the justification shall include:

- (a) Imminent peril to the public health, safety, or welfare; or
- (b) The unforeseen loss of federal funding for an agency program.

(2) Any agency may use the emergency rule or regulation procedure as provided in this section. However, no agency shall use such procedure to avoid the consequences for failing to timely adopt and promulgate rules and regulations.

(3) Rules and regulations adopted, amended, or repealed under this section shall be exempted from the notice and hearings requirements of section 84-907 and the review process required under section 84-905.01 and shall be valid upon approval of the Governor. An emergency rule or regulation shall remain in effect for a period of ninety calendar days and is renewable once for a period not to exceed ninety calendar days.

(4) Any agency which adopts, amends, or repeals a rule or regulation under this section shall file such rule or regulation with the Secretary of State. The agency shall also publish such rule or regulation on the agency's web site.

**Source:** Laws 2016, LB867, § 6.

**84-902 Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection.**

(1) Each agency shall file in the office of the Secretary of State a certified copy of the rules and regulations in force and effect in such agency. The Secretary of State shall keep a permanent file of all such rules and regulations. Such file shall be updated and kept current upon receipt of any rules and regulations adopted, amended, or repealed and filed with the Secretary of State as provided in the Administrative Procedure Act and shall be open to public inspection during regular business hours of his or her office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules and regulations to be filed as complete chapters or sections as directed by the Secretary of State.

(2) Rules and regulations filed with the Secretary of State pursuant to the Administrative Procedure Act shall be filed in the manner and form prescribed by the Secretary of State including electronic filing if so directed by the Secretary of State. The Secretary of State shall issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting rules and regulations to the Secretary of State. Such instructions shall provide for a uniform page size, a generally uniform and clear indexing system, and annotations including designation of enabling legislation and court or agency decisions interpreting the particular rule or regulation. For good cause shown, the Secretary of State may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

**Source:** Laws 1945, c. 255, § 2, p. 795; Laws 1947, c. 350, § 2, p. 1098; Laws 1973, LB 134, § 1; Laws 1974, LB 604, § 1; Laws 1976, LB 615, § 1; Laws 1978, LB 44, § 8; Laws 1986, LB 992, § 2; Laws 1987, LB 253, § 2; Laws 2004, LB 915, § 1; Laws 2016, LB867, § 7.

#### **84-906 Rule or regulation; when valid; presumption; limitation of action.**

(1) No rule or regulation of any agency shall be valid as against any person until five days after such rule or regulation has been filed with the Secretary of State except for rules and regulations adopted, amended, or repealed pursuant to section 84-901.04. No rule or regulation required under the Administrative Procedure Act to be filed with the Secretary of State shall remain valid as against any person until the certified copy of the rule or regulation has been so filed on the date designated and in the form prescribed by the Secretary of State. The filing of any rule or regulation shall give rise to a rebuttable presumption that it was duly and legally adopted.

(2) A rule or regulation adopted after August 1, 1994, shall be invalid unless adopted in substantial compliance with the provisions of the act, except that inadvertent failure to mail a notice of the proposed rule or regulation to any person shall not invalidate a rule or regulation.

(3) Any action to contest the validity of a rule or regulation on the grounds of its noncompliance with any provision of the act shall be commenced within four years after the effective date of the rule or regulation.

(4) The changes made to the act by Laws 1994, LB 446, shall not affect the validity or effectiveness of a rule or regulation adopted prior to August 1, 1994, or noticed for hearing prior to such date.

(5) The changes made to the act by Laws 2005, LB 373, shall not affect the validity or effectiveness of a rule or regulation adopted prior to October 1, 2005, or noticed for hearing prior to such date.

**Source:** Laws 1945, c. 255, § 6, p. 796; Laws 1947, c. 350, § 6, p. 1100; Laws 1973, LB 134, § 4; Laws 1986, LB 992, § 4; Laws 1987, LB 253, § 6; Laws 1994, LB 446, § 18; Laws 2005, LB 373, § 2; Laws 2016, LB867, § 8.

#### **84-906.03 Secretary of State; duties.**

It shall be the duty of the Secretary of State:



(1) To establish and cause to be compiled, indexed by subject, and published a codification system for all rules and regulations filed to be designated the Nebraska Administrative Code;

(2) To cause the Nebraska Administrative Code to be computerized to facilitate agencies in revision of their rules and regulations and provide research capabilities; and

(3) To post a current copy of existing rules and regulations as accepted by him or her as filed on his or her web site; to distribute a current copy of any existing rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and to distribute, on a regular basis, copies of any or all modifications or amendments to agency rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing.

**Source:** Laws 1973, LB 134, § 6; Laws 1975, LB 267, § 1; Laws 1980, LB 712, § 1; Laws 1981, LB 130, § 2; Laws 1982, LB 784, § 1; Laws 1986, LB 992, § 5; Laws 2016, LB867, § 9.

**84-906.04 Secretary of State; maintain docket for pending proceedings; contents.**

(1) The Secretary of State shall maintain a current public rulemaking or regulationmaking docket for each pending rulemaking or regulationmaking proceeding. A rulemaking or regulationmaking proceeding is pending from the time it is commenced by publication of a notice of proposed rule or regulation making to the time it is terminated by publication of a notice of termination or the rule or regulation becoming effective.

(2) For each rulemaking or regulationmaking proceeding, the docket shall indicate:

- (a) The subject matter of the proposed rule or regulation;
- (b) The time, date, and location of the public hearing regarding the proposed rule or regulation;
- (c) The name and address of agency personnel with whom people may communicate regarding the proposed rule or regulation;
- (d) Where written comments on the proposed rule or regulation may be inspected;
- (e) The time during which written comments may be made;
- (f) Where the description of the fiscal impact may be inspected and obtained;
- (g) The current status of the proposed rule or regulation and any agency determinations with respect thereto;
- (h) Any known timetable for agency decisions or other action in the proceeding;
- (i) The date of the rule's or regulation's adoption;
- (j) The date of the rule's or regulation's filing, indexing, and publication; and
- (k) The operative date of the rule or regulation if such date is later than the effective date prescribed in sections 84-906 and 84-911.

**Source:** Laws 1994, LB 446, § 16; Laws 2016, LB867, § 10.

**84-907 Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure; exemption.**

(1) Except as provided in section 84-901.04, no rule or regulation shall be adopted, amended, or repealed by any agency except after public hearing on the question of adopting, amending, or repealing such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto to the Secretary of State and by publication in a newspaper having general circulation in the state. All such hearings shall be open to the public.

(2) The public hearing on a rule or regulation that is required to be adopted, amended, or repealed based upon a legislative bill shall be held within twelve months after the effective or operative date of the legislative bill. If there is more than one applicable effective or operative date, the twelve-month period shall be calculated using the latest date. In addition to the requirements of section 84-906.01, draft copies or working copies of all rules and regulations to be adopted, amended, or repealed by any agency shall be available to the public in the office of the Secretary of State at the time of giving notice. The notice shall include: (a) A declaration of availability of such draft or work copies for public examination; (b) a short explanation of the purpose of the proposed rule or regulation or the reason for the amendment or repeal of the rule or regulation; and (c) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated or an explanation of where the description of the fiscal impact may be inspected and obtained. No person may challenge the validity of any rule or regulation, the adoption, amendment, or repeal of any rule or regulation, or any determination of the applicability of any rule or regulation on the basis of the explanation or description provided pursuant to subdivisions (b) and (c) of this subsection.

(3) A change to an existing rule or regulation to (a) alter the style or form of such rule or regulation, (b) correct a technical error, or (c) alter a citation or reference to make such citation or reference consistent with state or federal law but which does not affect the substance of the rule or regulation is exempt from the requirements of this section. Such change shall not alter the rights or obligations of the public.

(4) Agencies shall be exempt from promulgating security policies and procedures which, if made public, would create a substantial likelihood of endangering public safety or property.

**Source:** Laws 1953, c. 359, § 1, p. 1138; Laws 1977, LB 462, § 1; Laws 1978, LB 585, § 1; Laws 1980, LB 846, § 1; Laws 1986, LB 992, § 7; Laws 1987, LB 253, § 8; Laws 1987, LB 487, § 1; Laws 1994, LB 446, § 21; Laws 2005, LB 373, § 4; Laws 2011, LB617, § 2; Laws 2016, LB867, § 11.

**84-907.01 Repealed. Laws 2016, LB867, § 21.**

**84-907.02 Repealed. Laws 2016, LB867, § 21.**

**84-907.03 Secretary of State Administration Cash Fund; created; use; investment.**

There is hereby created the Secretary of State Administration Cash Fund. The fund shall consist of revenue received to defray costs as authorized in sections 25-3308 and 84-901 to 84-908. The revenue shall be collected by the Secretary

of State and remitted to the State Treasurer for credit to the fund. The fund shall be used to (1) offset expenses incurred as a result of sections 84-901 to 84-908, (2) administer the Nebraska Uniform Athlete Agents Act, and (3) administer the Nonrecourse Civil Litigation 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 1994, LB 1194, § 8; Laws 1995, LB 7, § 148; Laws 2003, LB 228, § 15; Laws 2009, LB292, § 20; Laws 2010, LB1094, § 10; Laws 2017, LB280, § 4.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Nebraska Uniform Athlete Agents Act, see section 48-2601.

Nonrecourse Civil Litigation Act, see section 25-3301.

### **84-907.06 Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council and Secretary of State.**

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, the agency shall (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, send to the Executive Board of the Legislative Council for purposes of section 84-907.07 if applicable, to the Executive Board of the Legislative Council to be forwarded to the relevant standing committee of the Legislature for purposes of the Occupational Board Reform Act if applicable, and to the Secretary of State to be made available to the public by means which include, but are not limited to, publication on the Secretary of State's web site, if applicable, the following information: A copy of the hearing notice required by section 84-907; a draft copy of the rule or regulation; and the information provided to the Governor pursuant to section 84-907.09.

**Source:** Laws 1994, LB 446, § 24; Laws 2005, LB 373, § 5; Laws 2012, LB782, § 228; Laws 2013, LB222, § 43; Laws 2016, LB867, § 12; Laws 2017, LB464, § 1; Laws 2018, LB299, § 18.

Operative date July 1, 2019.

#### Cross References

Occupational Board Reform Act, see section 84-933.

### **84-907.07 Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties.**

The chairperson of the Executive Board of the Legislative Council or committee staff member of the board shall refer materials received pursuant to section 84-907.06 for review (1) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (2) if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving. The committee or commit-

tee chairperson of such standing committee of the Legislature having subject matter jurisdiction may submit a written or oral statement at the public hearing on the rule or regulation or, if the Governor approves an emergency rule or regulation under section 84-901.04, may submit a written statement to the agency and to the Secretary of State to be entered in the records relating to the rule or regulation.

**Source:** Laws 1994, LB 446, § 25; Laws 2005, LB 373, § 6; Laws 2016, LB867, § 13.

**84-907.09 Adoption, amendment, or repeal of rule or regulation; provide information to Governor.**

Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, the agency shall provide to the Governor for review (a) a description of the proposed rule or regulation and the entity or entities it will impact, (b) an explanation of the necessity of the proposed rule or regulation, including the identification of the specific legislative bill if applicable, or the authorizing statute when there is no legislative bill applicable, (c) a statement that the proposed rule or regulation is consistent with legislative intent, (d) a statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded, (e) a statement indicating if the proposed rule or regulation is the result of a federal mandate on state government or on a local governmental subdivision and if the mandate is funded, (f) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons, (g) a statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing, and (h) a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation.

**Source:** Laws 2005, LB 373, § 1; Laws 2011, LB617, § 3; Laws 2016, LB867, § 14.

**Cross References**

Negotiated Rulemaking Act, see section 84-921.

**84-908 Rule or regulation; adoption; amendment; repeal; considerations; when effective; approval by Governor; filing.**

(1) Except as provided in section 84-901.04, no adoption, amendment, or repeal of any rule or regulation shall become effective until the same has been approved by the Governor and filed with the Secretary of State after a hearing has been set on such rule or regulation pursuant to section 84-907. When determining whether to approve the adoption, amendment, or repeal of any rule or regulation relating to an issue of unique interest to a specific geographic area, the Governor's considerations shall include, but not be limited to: (a) Whether adequate notice of hearing was provided in the geographic area affected by the rule or regulation. Adequate notice shall include, but not be limited to, the availability of copies of the rule or regulation at the time notice was given pursuant to section 84-907; and (b) whether reasonable and conve-

nient opportunity for public comment was provided for the geographic area affected by the rule or regulation. If a public hearing was not held in the affected geographic area, reasons shall be provided by the agency to the Governor. Any rule or regulation properly adopted by any agency shall be filed with the Secretary of State.

(2) Except as provided in section 84-901.04, no agency shall utilize, enforce, or attempt to enforce any rule or regulation or proposed rule or regulation unless the rule, regulation, or proposed rule or regulation has been approved by the Governor and filed with the Secretary of State after a hearing pursuant to section 84-907.

**Source:** Laws 1953, c. 359, § 2, p. 1138; Laws 1972, LB 373, § 1; Laws 1974, LB 604, § 4; Laws 1975, LB 316, § 1; Laws 1978, LB 44, § 10; Laws 1986, LB 992, § 10; Laws 1987, LB 253, § 10; Laws 1987, LB 189, § 1; Laws 2013, LB242, § 3; Laws 2016, LB867, § 15.

**84-910 Agency; notification to Legislative Performance Audit Committee; contents; format; notice to Executive Board of the Legislative Council.**

(1) On or before July 1 of each year, each agency shall notify the Legislative Performance Audit Committee of the status of all rules and regulations pending before the agency which are required by law and which have not been adopted and promulgated. If such rules and regulations have not been adopted and promulgated within the time required pursuant to section 84-901.01, the agency shall provide an explanation to the committee stating why the agency has not adopted and promulgated such rules and regulations. If an additional appropriation was made with respect to legislation enacted to provide funding for or additional staff to implement a program for which rules and regulations are required to be adopted, the notification shall include what the funding has been used for and what functions the staff have been performing while such rules and regulations are pending. The format of the notification shall be established by the committee and shall be updated periodically.

(2) On or before July 1 of each year, each agency shall, for purposes of the Occupational Board Reform Act, notify the Executive Board of the Legislative Council of the status of all rules and regulations pending before the agency which have not been adopted and promulgated. The executive board shall forward any notification received pursuant to this subsection to the standing committee of the Legislature with jurisdiction over the rules and regulations.

**Source:** Laws 2011, LB617, § 4; Laws 2012, LB782, § 229; Laws 2013, LB222, § 44; Laws 2018, LB299, § 19; Laws 2018, LB751, § 2.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB299, section 19, with LB751, section 2, to reflect all amendments.

**Note:** Changes made by LB751 became effective July 19, 2018. Changes made by LB299 became operative July 1, 2019.

**Cross References**

**Occupational Board Reform Act**, see section 84-933.

**84-920 Act, how cited.**

Sections 84-901 to 84-920 and the Occupational Board Reform Act shall be known and may be cited as the Administrative Procedure Act.

**Source:** Laws 1987, LB 253, § 22; Laws 1994, LB 446, § 38; Laws 1995, LB 490, § 191; Laws 2005, LB 373, § 8; Laws 2011, LB617, § 5; Laws 2016, LB867, § 16; Laws 2018, LB299, § 20.  
Operative date July 1, 2019.

## Cross References

Occupational Board Reform Act, see section 84-933.

## (c) OCCUPATIONAL BOARD REFORM ACT

**84-933 Act, how cited.**

Sections 84-933 to 84-948 shall be known and may be cited as the Occupational Board Reform Act.

**Source:** Laws 2018, LB299, § 1.  
Operative date July 1, 2019.

**84-934 Definitions, where found.**

For purposes of the Occupational Board Reform Act, the definitions in sections 84-935 to 84-944 apply.

**Source:** Laws 2018, LB299, § 2.  
Operative date July 1, 2019.

**84-935 Government certification, defined.**

Government certification means a nontransferable recognition granted to an individual by an occupational board through a voluntary program in which the individual meets personal qualifications established by the Legislature. Government certification allows the certified individual to use a designated title. For purposes of the Occupational Board Reform Act, in analyzing health professions which are subject to the Nebraska Regulation of Health Professions Act, the definition of certification in section 71-6206 applies.

**Source:** Laws 2018, LB299, § 3.  
Operative date July 1, 2019.

## Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

**84-936 Lawful occupation, defined.**

Lawful occupation means a course of conduct, a pursuit, or a profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

**Source:** Laws 2018, LB299, § 4.  
Operative date July 1, 2019.

**84-937 Least restrictive regulation, defined.**

Least restrictive regulation means one of the following types of regulation, listed from least restrictive to most restrictive, consistent with the health, safety, and welfare of the public:

- (1) Market competition;
- (2) Third-party or consumer-created ratings and reviews;
- (3) Private certification;
- (4) Specific private civil cause of action to remedy consumer harm;
- (5) Deceptive trade practices under the Uniform Deceptive Trade Practices Act;

- (6) Mandatory disclosure of attributes of the specific goods or services;
- (7) Regulation of the process of providing the specific goods or services to consumers;
- (8) Inspection;
- (9) Bonding or insurance;
- (10) Registration;
- (11) Government certification; and
- (12) Occupational license.

**Source:** Laws 2018, LB299, § 5.  
Operative date July 1, 2019.

**Cross References**

Uniform Deceptive Trade Practices Act, see section 87-306.

**84-938 Occupational board, defined.**

Occupational board means a board, commission, department, or other entity created by state law which regulates providers through occupational regulations.

**Source:** Laws 2018, LB299, § 6.  
Operative date July 1, 2019.

**84-939 Occupational license, defined.**

Occupational license means a nontransferable authorization in law (1) for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the Legislature and (2) which is required in order to legally perform the lawful occupation for compensation.

**Source:** Laws 2018, LB299, § 7.  
Operative date July 1, 2019.

**84-940 Occupational regulation, defined.**

(1) Occupational regulation means a statute, rule, regulation, practice, policy, or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation.

(2) Occupational regulation includes any government certification, registration, and occupational license.

(3) Occupational regulation does not include (a) business licensure, facility licensure, building permit requirements, or zoning and land-use regulation except to the extent that the same state laws that require a business license, a facility license, a building permit, or zoning and land-use regulation also regulate an individual's personal qualifications to perform a lawful occupation or (b) an occupational license administered by the Supreme Court.

**Source:** Laws 2018, LB299, § 8.  
Operative date July 1, 2019.

**84-941 Personal qualifications, defined.**

Personal qualifications means criteria related to an individual's personal background and characteristics, including completion of an approved edu-

cational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

**Source:** Laws 2018, LB299, § 9.  
Operative date July 1, 2019.

**84-942 Private certification, defined.**

Private certification means a nontransferable recognition granted to an individual by a private organization through a voluntary program in which the individual meets personal qualifications established by the private organization.

**Source:** Laws 2018, LB299, § 10.  
Operative date July 1, 2019.

**84-943 Provider, defined.**

Provider means an individual provider of goods or services engaged in a lawful occupation.

**Source:** Laws 2018, LB299, § 11.  
Operative date July 1, 2019.

**84-944 Registration, defined.**

(1) Registration means a nontransferable registration granted to an individual under which (a) the individual is required to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides, (b) upon receipt of the notice by the government, the individual may use the term registered as a designated title to engage in a lawful occupation, and (c) such notice is required to engage in the lawful occupation for compensation and is required in order to use the term registered as a designated title to engage in the lawful occupation.

(2) Registration may require a bond or insurance.

(3) For purposes of the Occupational Board Reform Act, in analyzing health professions which are subject to the Nebraska Regulation of Health Professions Act, the definition of registration in section 71-6217 applies.

**Source:** Laws 2018, LB299, § 12.  
Operative date July 1, 2019.

**Cross References**

Nebraska Regulation of Health Professions Act, see section 71-6201.

**84-945 Use of terms certification, certified, registration, and registered; how construed.**

For purposes of the Occupational Board Reform Act:

(1) Government certification and registration are not synonymous with occupational license;

(2) Except as provided in section 84-935, when the terms certification and certified are used outside of the Occupational Board Reform Act to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of the



Occupational Board Reform Act as requiring an individual to meet the requirements for an occupational license; and

(3) Except as provided in section 84-944, when the terms registration and registered are used outside of the Occupational Board Reform Act to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of the Occupational Board Reform Act as requiring an individual to meet the requirements for an occupational license.

**Source:** Laws 2018, LB299, § 13.  
Operative date July 1, 2019.

#### **84-946 Statement of policy.**

It is the policy of the State of Nebraska:

(1) To protect the fundamental right of an individual to pursue a lawful occupation;

(2) To use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest;

(3) To enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;

(4) To construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;

(5) To use the least restrictive method of regulation as set out in section 71-6222 for lawful occupations subject to the Nebraska Regulation of Health Professions Act; and

(6) To provide ongoing legislative review of occupational regulations.

**Source:** Laws 2018, LB299, § 14.  
Operative date July 1, 2019.

#### **Cross References**

Nebraska Regulation of Health Professions Act, see section 71-6201.

#### **84-947 Individual with criminal conviction; submit preliminary application; occupational board; duties; determination; appeal; fee.**

(1) The fundamental right of an individual to pursue an occupation includes the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual's personal qualifications.

(2)(a) An individual who has a criminal conviction may submit to the appropriate occupational board a preliminary application for an occupational license, government certification, or state recognition of the individual's personal qualifications for a determination as to whether the individual's criminal conviction would disqualify the individual from obtaining the occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board. The preliminary application may be submitted at any time, including prior to obtaining required education

or paying any fee, other than the fee for the preliminary application under subsection (7) of this section.

(b) The individual may include with the preliminary application additional information about the individual's current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

(3) Upon receipt of a preliminary application under subsection (2) of this section and a fee if required under subsection (7) of this section, the appropriate occupational board shall make a determination of whether the individual's criminal conviction would disqualify the individual from obtaining an occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board.

(4) The occupational board shall issue its determination in writing within ninety days after receiving a preliminary application under subsection (2) of this section. The determination shall include findings of fact and conclusions of law. If the occupational board determines that the individual's criminal conviction would disqualify the individual, the occupational board may advise the individual of any action the individual may take to remedy the disqualification. If the occupational board finds that the individual has been convicted of a subsequent criminal conviction, the occupational board may rescind a determination upon finding that the subsequent criminal conviction would be disqualifying under subsection (3) of this section.

(5) The individual may appeal the determination of the occupational board. The appeal shall be in accordance with the Administrative Procedure Act.

(6) An individual shall not file another preliminary application under this section with the same occupational board within two years after the final decision on the previous preliminary application, except that if the individual has taken action to remedy the disqualification as advised by the occupational board, the individual may file another preliminary application under this section with the same occupational board six months after the final decision on the previous preliminary application.

(7) An occupational board may charge a fee not to exceed one hundred dollars for each preliminary application filed pursuant to this section. The fee is intended to offset the administrative costs incurred under this section.

**Source:** Laws 2018, LB299, § 15.

Operative date July 1, 2019.

#### Cross References

Administrative Procedure Act, see section 84-920.

### **84-948 Standing committee of Legislature; duties; report; contents.**

(1) Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

(2) Each committee may require the submission of information by the affected occupational board and other affected or interested parties.

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

(c) The number of members of the occupational board and how the members are appointed;

(d) The qualifications for membership on the occupational board;

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

(i) A statement from the occupational board on the effectiveness of the occupational regulations; and

(j) A comparison of whether and how other states regulate the occupation.

(4) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for meeting such policies:

(a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

(b) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

(d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

**Source:** Laws 2018, LB299, § 16.  
Operative date July 1, 2019.

**Cross References**

Nebraska Regulation of Health Professions Act, see section 71-6201.  
Uniform Deceptive Trade Practices Act, see section 87-306.

**ARTICLE 12  
PUBLIC RECORDS**

(a) RECORDS MANAGEMENT ACT

Section

84-1205.01. Repealed. Laws 2017, LB644, § 21.  
84-1227. Records Management Cash Fund; created; use; investment.

(c) SCHOOL DISTRICT OR EDUCATIONAL SERVICE UNIT

84-1229. Electronic records; authorized.

(a) RECORDS MANAGEMENT ACT

**84-1205.01 Repealed. Laws 2017, LB644, § 21.**

**84-1227 Records Management Cash Fund; created; use; investment.**

There is hereby established in the state treasury a special fund to be known as the Records Management Cash Fund which, when appropriated by the Legislature, shall be expended by the Secretary of State for the purposes of providing records management services and assistance to local agencies, for development and maintenance of the portal for providing electronic access to public records or electronic information and services, and for grants to a state or local agency as provided in subdivision (1)(j) of section 84-1204. All fees and charges for the

purpose of records management services and analysis received by the Secretary of State from the local agencies shall be remitted to the State Treasurer for credit to such fund. Transfers may be made from the fund to the General Fund or the Secretary of State Administration Cash Fund at the direction of the Legislature. The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer five hundred thousand dollars from the Records Management Cash Fund to the Information Management Revolving Fund on or before June 30, 2016. Any money in the Records 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.

**Source:** Laws 1984, LB 527, § 3; Laws 1995, LB 7, § 149; Laws 1997, LB 590, § 14; Laws 2003, LB 257, § 2; Laws 2009, First Spec. Sess., LB3, § 93; Laws 2012, LB719, § 30; Laws 2016, LB957, § 14; Laws 2018, LB945, § 27.  
Effective date April 5, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### (c) SCHOOL DISTRICT OR EDUCATIONAL SERVICE UNIT

#### 84-1229 Electronic records; authorized.

All books, papers, documents, reports, and records kept by a school district or educational service unit may be retained as electronic records. Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

**Source:** Laws 2015, LB365, § 1.

## ARTICLE 13

### STATE EMPLOYEES RETIREMENT ACT

Section	
84-1301.	Terms, defined.
84-1305.	Retirement board; powers and duties.
84-1305.02.	Retirement board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.
84-1307.	Retirement system; membership; requirements; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.
84-1309.02.	Cash balance benefit; election; effect; administrative services agreements; authorized.
84-1310.01.	Defined contribution benefit; employee account; investment options; procedures; administration.
84-1311.03.	Defined contribution benefit; employer account; investment options; procedures; administration.
84-1312.	Direct rollover; terms, defined; distributee; powers; board; powers.
84-1313.	Retirement system; accept payments and rollovers; limitations; board; powers.
84-1319.	Future service retirement benefits; when payable; how computed; selection of annuity; board; deferment of benefits; certain required minimum distributions; election authorized.
84-1323.01.	Employee; retirement; disability; medical examination; waiver.
84-1324.	Retirement benefits; exemption from legal process; exception.
84-1325.	Employees; military service; credit; payments.

**84-1301 Terms, defined.**

For purposes of the State Employees Retirement Act, unless the context otherwise requires:

(1)(a) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment.

(b) For an employee hired prior to January 1, 2018, the mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used.

(c) For an employee hired on or after January 1, 2018, or rehired on or after January 1, 2018, after termination of employment and being paid a retirement benefit or taking a refund of contributions, the mortality assumption used for purposes of converting the member cash balance account shall be a unisex mortality table that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The mortality table and actuarial factors in effect on the member's retirement date will be used to calculate the actuarial equivalency of any retirement benefit;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of disability means the date on which a member is determined to be disabled by the board;

(7) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 84-1310 and, if vested, employer contributions and earnings pursuant to section 84-1311;

(8) Disability means an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration;

(9) Employee means any employee of the State Board of Agriculture who is a member of the state retirement system on July 1, 1982, and any person or officer employed by the State of Nebraska whose compensation is paid out of state funds or funds controlled or administered by a state department through any of its executive or administrative officers when acting exclusively in their respective official, executive, or administrative capacities. Employee does not include (a) judges as defined in section 24-701, (b) members of the Nebraska State Patrol, except for those members of the Nebraska State Patrol who elected pursuant to section 60-1304 to remain members of the State Employees Retirement System of the State of Nebraska, (c) employees of the University of Nebraska, (d) employees of the state colleges, (e) employees of community colleges, (f) employees of the Department of Labor employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the federal Social Security Act or funds from other federal sources, except that if the contributory retirement plan or contract let pursuant to section 48-609, as such section existed prior to January 1, 2018, is terminated, such employees shall become employees for purposes of the State Employees Retirement Act on the first day of the first pay period following the termination of such contributory retirement plan or contract, (g) employees of the State Board of Agriculture who are not members of the state retirement system on July 1, 1982, (h) the Nebraska National Guard air and army technicians, (i) persons eligible for membership under the School Employees Retirement System of the State of Nebraska who have not elected to become members of the retirement system pursuant to section 79-920 or been made members of the system pursuant to such section, except that those persons so eligible and who as of September 2, 1973, are contributing to the State Employees Retirement System of the State of Nebraska shall continue as members of such system, or (j) employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become members of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska. Any individual appointed by the Governor may elect not to become a member of the State Employees Retirement System of the State of Nebraska;

(10) Employee contribution credit means an amount equal to the member contribution amount required by section 84-1308;

(11) Employer contribution credit means an amount equal to the employer contribution amount required by section 84-1309;

(12) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(13) Five-year break in service means five consecutive one-year breaks in service;

(14) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(15) Fund means the State Employees Retirement Fund created by section 84-1309;

(16) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(17) Hire date or date of hire means the first day of compensated service subject to retirement contributions;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319;



(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service before January 1, 1964;

(26) Regular interest means the rate of interest earned each calendar year commencing January 1, 1975, as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1984;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in section 84-1308;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the State Employees Retirement Act after terminating employment;

(29) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(32) Retirement system means the State Employees Retirement System of the State of Nebraska;

(33) Service means the actual total length of employment as an employee and shall not be deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 84-1317;

(34) State department means any department, bureau, commission, or other division of state government not otherwise specifically defined or exempted in the act, the employees and officers of which are not already covered by a retirement plan;

(35) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of

the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(36) Termination of employment occurs on the date on which the agency which employs the member determines that the member's employer-employee relationship with the State of Nebraska is dissolved. The agency which employs the member shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with the State of Nebraska is dissolved enters into an employer-employee relationship with the same or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the state and the date when the employer-employee relationship commenced with the same or another agency. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 84-1321, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(37) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

**Source:** Laws 1963, c. 532, § 1, p. 1667; Laws 1965, c. 574, § 1, p. 1864; Laws 1965, c. 573, § 1, p. 1861; Laws 1969, c. 584, § 116, p. 2420; Laws 1971, LB 987, § 33; Laws 1973, LB 498, § 1; Laws 1974, LB 905, § 8; Laws 1980, LB 818, § 3; Laws 1982, LB 942, § 8; Laws 1983, LB 223, § 4; Laws 1984, LB 747, § 6; Laws 1984, LB 751, § 1; Laws 1986, LB 325, § 15; Laws 1986, LB 529, § 54; Laws 1986, LB 311, § 29; Laws 1989, LB 506, § 19; Laws 1991, LB 549, § 60; Laws 1993, LB 417, § 6; Laws 1994, LB 1068, § 4; Laws 1996, LB 847, § 41; Laws 1996, LB 900, § 1070; Laws 1996, LB 1076, § 37; Laws 1996, LB 1273, § 30; Laws 1997, LB 624, § 35; Laws 1998, LB 1191, § 69; Laws 1999, LB 703, § 20; Laws 2000, LB 1192, § 22; Laws 2002, LB 407, § 54; Laws 2002, LB 470, § 10; Laws 2002, LB 687, § 18; Laws 2003, LB 451, § 23; Laws 2004, LB 1097, § 32; Laws 2006, LB 366, § 7; Laws 2006, LB 1019, § 14; Laws 2011, LB509, § 44; Laws 2012, LB916, § 33; Laws 2013, LB263, § 35; Laws 2017, LB172, § 85; Laws 2017, LB415, § 47; Laws 2018, LB1005, § 41.  
Operative date April 24, 2018.

#### Cross References

For provisions on Public Employees Retirement Board, see sections 84-1501 to 84-1513.  
Spousal Pension Rights Act, see section 42-1101.

### **84-1305 Retirement board; powers and duties.**

The general administration of the retirement system shall be vested in the retirement board. The board may adopt and promulgate rules and regulations

to carry out the State Employees Retirement Act. The board shall maintain records and may employ such assistants and employees as may be necessary to carry out the act.

**Source:** Laws 1963, c. 532, § 5, p. 1669; Laws 1969, c. 584, § 117, p. 2421; Laws 1973, LB 498, § 2; Laws 1984, LB 751, § 2; Laws 1991, LB 549, § 62; Laws 1995, LB 369, § 8; Laws 1996, LB 847, § 42; Laws 2018, LB1005, § 42.  
Operative date July 19, 2018.

**84-1305.02 Retirement board; power to adjust contributions and benefits; overpayment of benefits; investigatory powers; subpoenas.**

(1)(a) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the State Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, credit dividend amounts, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest or interest credits, whichever is appropriate, thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest or interest credits, whichever is appropriate.

(b) The board shall have the power, through the director of the Nebraska Public Employees Retirement Systems or the director's designee, to make a thorough investigation of any overpayment of a benefit, when in the judgment of the retirement system such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts.

(2) The board may adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

**Source:** Laws 1996, LB 1076, § 41; Laws 2002, LB 687, § 19; Laws 2006, LB 1019, § 15; Laws 2015, LB40, § 14; Laws 2018, LB1005, § 43.  
Operative date July 19, 2018.

**84-1307 Retirement system; membership; requirements; composition; exercise of option to join; effect; new employee; participation in another governmental plan; how treated; separate employment; effect.**

(1) The membership of the retirement system shall be composed of all persons who are or were employed by the State of Nebraska and who maintain an account balance with the retirement system.

(2) The following employees of the State of Nebraska are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment; and (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system within the first thirty days of employment. An employee who exercises the option to begin participation in the retirement system pursuant to this section shall remain in the retirement system until his or her termination of employment or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee shall be authorized to participate in the retirement system provided for in the State Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) For purposes of this section, (a) permanent full-time employees includes employees of the Legislature or Legislative Council who work one-half or more of the regularly scheduled hours during each pay period of the legislative session and (b) permanent part-time employees includes employees of the Legislature or Legislative Council who work less than one-half of the regularly scheduled hours during each pay period of the legislative session.

(5)(a) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(b) If the contributory retirement plan or contract let pursuant to section 48-609, as such section existed prior to January 1, 2018, is terminated, employees of the Department of Labor who are active participants in such contributory retirement plan or contract on the date of termination of such plan or contract shall be granted vesting credit for their years of participation in such plan or contract.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified for membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public employment system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) State agencies shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employ-

ee. Information necessary to determine membership in the retirement system shall be provided by the employer.

**Source:** Laws 1963, c. 532, § 7, p. 1670; Laws 1969, c. 842, § 1, p. 3177; Laws 1973, LB 492, § 1; Laws 1983, LB 219, § 1; Laws 1986, LB 325, § 16; Laws 1986, LB 311, § 30; Laws 1990, LB 834, § 1; Laws 1995, LB 501, § 11; Laws 1996, LB 1076, § 38; Laws 1997, LB 624, § 36; Laws 1998, LB 1191, § 71; Laws 1999, LB 703, § 21; Laws 2000, LB 1192, § 24; Laws 2002, LB 407, § 55; Laws 2002, LB 687, § 20; Laws 2004, LB 1097, § 33; Laws 2006, LB 366, § 8; Laws 2008, LB1147, § 13; Laws 2009, LB188, § 10; Laws 2010, LB950, § 21; Laws 2011, LB509, § 45; Laws 2013, LB263, § 36; Laws 2017, LB172, § 86.

**84-1309.02 Cash balance benefit; election; effect; administrative services agreements; authorized.**

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. An active member shall make a one-time election beginning September 1, 2012, through October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013. Any member who made the election prior to April 7, 2012, does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to April 7, 2012, or beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) Except as provided in subdivision (2)(b) of section 84-1321.01, the employee cash balance account within the State Employees Retirement Fund shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

**Source:** Laws 2002, LB 687, § 21; Laws 2003, LB 451, § 25; Laws 2005, LB 364, § 17; Laws 2006, LB 366, § 10; Laws 2006, LB 1019, § 16; Laws 2007, LB328, § 7; Laws 2009, LB188, § 11; Laws 2010, LB950, § 22; Laws 2011, LB509, § 46; Laws 2012, LB916, § 35; Laws 2017, LB415, § 48.

**84-1310.01 Defined contribution benefit; employee account; investment options; procedures; administration.**

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. Such investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to

closely duplicate the total return of the Standard and Poor's division of The McGraw-Hill Companies, Inc., 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning on July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 84-1323 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board may adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

**Source:** Laws 1984, LB 751, § 11; Laws 1991, LB 549, § 66; Laws 1994, LB 833, § 47; Laws 1996, LB 847, § 44; Laws 1999, LB 703, § 22; Laws 2000, LB 1200, § 5; Laws 2001, LB 408, § 26; Laws 2002, LB 407, § 56; Laws 2002, LB 687, § 23; Laws 2005, LB 503, § 16; Laws 2008, LB1147, § 14; Laws 2010, LB950, § 23; Laws 2012, LB916, § 36; Laws 2014, LB759, § 22; Laws 2018, LB1005, § 44.

Operative date July 19, 2018.

**84-1311.03 Defined contribution benefit; employer account; investment options; procedures; administration.**

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 84-1310.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 84-1310.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1)(a) of section 84-1323 or his or her beneficiary may transfer any portion of his or her funds among the options. The board may adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the agency shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employer account.

**Source:** Laws 1999, LB 687, § 4; Laws 2000, LB 1200, § 6; Laws 2001, LB 408, § 27; Laws 2002, LB 407, § 57; Laws 2002, LB 687, § 25; Laws 2004, LB 1097, § 34; Laws 2005, LB 503, § 17; Laws 2008, LB1147, § 15; Laws 2010, LB950, § 24; Laws 2012, LB916, § 37; Laws 2018, LB1005, § 45.  
Operative date July 19, 2018.

**84-1312 Direct rollover; terms, defined; distributee; powers; board; powers.**

(1) For purposes of this section and section 84-1313:

(a) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(b) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an



endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 84-1313, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after January 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board may adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

**Source:** Laws 1996, LB 847, § 48; Laws 2002, LB 407, § 58; Laws 2012, LB916, § 38; Laws 2018, LB1005, § 46.  
Operative date July 19, 2018.

**84-1313 Retirement system; accept payments and rollovers; limitations; board; powers.**

(1) The retirement system may accept cash rollover contributions from a member who is making payment pursuant to section 84-1322 or 84-1325 if the contributions do not exceed the amount of payment authorized to be paid by the member pursuant to section 84-1322 or 84-1325 and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified plan under section 401(a) of the Internal Revenue Code or (b) the

interest of the member from an individual retirement account or an individual retirement annuity, the entire amount of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified plan under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days from the date of the distribution from the qualified plan, individual retirement account, or individual retirement annuity.

(2) Cash transferred to the retirement system as a rollover contribution shall be deposited as other payments made under section 84-1322 or 84-1325.

(3) Under the same conditions as provided in subsection (1) of this section, the retirement system may accept eligible rollover distributions from (a) an annuity contract described in section 403(b) of the Internal Revenue Code, (b) a plan described in section 457(b) of the code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (c) the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the code that is eligible to be rolled over and would otherwise be includable in gross income. Amounts accepted pursuant to this subsection shall be deposited as all other payments under this section.

(4) The retirement system may accept direct rollover distributions made from a qualified plan pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(5) The board may adopt and promulgate rules and regulations defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

**Source:** Laws 1996, LB 847, § 49; Laws 1997, LB 624, § 37; Laws 2002, LB 407, § 59; Laws 2018, LB1005, § 47.

Operative date July 19, 2018.

**84-1319 Future service retirement benefits; when payable; how computed; selection of annuity; board; deferment of benefits; certain required minimum distributions; election authorized.**

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 84-1318 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined acceptable by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the

remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 84-1318 except as provided in this section.

(2) Except as provided in subsection (4) of this section, the monthly annuity income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amounts, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the State Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 84-1309.02, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The interest rate and actuarial factors in effect on the member's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 84-1309.02, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate to calculate the retirement benefits for the cash balance plan members.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the State Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 84-1320 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and

one-half years of age and has terminated his or her employment with the state. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

**Source:** Laws 1963, c. 532, § 19, p. 1674; Laws 1973, LB 498, § 5; Laws 1983, LB 210, § 2; Laws 1984, LB 751, § 7; Laws 1986, LB 325, § 18; Laws 1986, LB 311, § 33; Laws 1987, LB 308, § 1; Laws 1987, LB 60, § 4; Laws 1991, LB 549, § 70; Laws 1992, LB 543, § 2; Laws 1994, LB 1306, § 8; Laws 1996, LB 1273, § 31; Laws 2002, LB 687, § 27; Laws 2003, LB 451, § 29; Laws 2006, LB 1019, § 17; Laws 2007, LB328, § 9; Laws 2009, LB188, § 14; Laws 2012, LB916, § 39; Laws 2013, LB263, § 40; Laws 2017, LB415, § 49.

#### **84-1323.01 Employee; retirement; disability; medical examination; waiver.**

(1) Any member who is an employee, disregarding the length of service, may be retired as a result of disability either upon the member's own application or upon the application of the member's employer or any person acting in the member's behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the retirement board, and the physician shall certify to the board that the member suffers from an inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which was initially diagnosed or became disabling while the member was an active participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five years to undergo a medical examination at the expense of the board once each year. If any disability beneficiary refuses to undergo such an examination, the disability retirement benefit may be discontinued by the board.

(3) The retirement board may adopt and promulgate rules and regulations and prescribe the necessary forms to carry out this section.

**Source:** Laws 1973, LB 498, § 8; Laws 1993, LB 417, § 8; Laws 1997, LB 623, § 44; Laws 1999, LB 703, § 25; Laws 2001, LB 408, § 29; Laws 2010, LB950, § 27; Laws 2017, LB415, § 50.

#### **84-1324 Retirement benefits; exemption from legal process; exception.**

All annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act 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 except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

**Source:** Laws 1963, c. 532, § 24, p. 1676; Laws 1986, LB 311, § 37; Laws 1989, LB 506, § 20; Laws 1996, LB 1273, § 34; Laws 2012, LB916, § 42; Laws 2015, LB40, § 15.

#### **Cross References**

**Spousal Pension Rights Act**, see section 42-1101.

#### **84-1325 Employees; military service; credit; payments.**

(1)(a) For military service beginning on or after December 12, 1994, but before January 1, 2018, any employee who, while an employee, entered into and served in the armed forces of the United States and who within ninety days after honorable discharge or honorable separation from active duty again became an employee shall be credited, for the purposes of the provisions of section 84-1317, with all the time actually served in the armed forces as if such person had been an employee throughout such service in the armed forces pursuant to the terms and conditions of subdivision (b) of this subsection.

(b) Under such rules and regulations as the retirement board may adopt and promulgate, any employee who is reemployed pursuant to 38 U.S.C. 4301 et seq., may pay to the retirement system an amount equal to the sum of all deductions which would have been made from the employee's compensation during such period of military service. Payment shall be made within the period required by law, not to exceed five years. To the extent that payment is made, (i) the employee shall be treated as not having incurred a break in service by reason of the employee's period of military service, (ii) the period of military service shall be credited for the purposes of determining the nonforfeitability of the employee's accrued benefits and the accrual of benefits under the plan, and (iii) the employer shall allocate the amount of employer contributions to the employee's employer account in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of employee and employer contributions under this subsection, the employee's compensation during the period of military service shall be the rate the employee would have received but for the military service or, if not reasonably determinable, the average rate the employee received during the twelve-month period immediately preceding military service.

(c) The employer shall pick up the employee contributions made through irrevocable payroll deduction authorizations pursuant to this subsection, and the contributions so picked up shall be treated as employer contributions in the

same manner as contributions picked up under subsection (1) of section 84-1308.

(2)(a) For military service beginning on or after January 1, 2018, any employee who is reemployed pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of the employee's period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the employee's accrued benefits and the accrual of benefits under the plan.

(b) The agency employing the employee shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service. To satisfy the liability, the agency employing the employee shall pay to the retirement system an amount equal to:

(i) The sum of the employee and employer contributions that would have been paid during such period of military service; and

(ii) Any actuarial costs necessary to fund the obligation of the plan to provide benefits based upon such period of military service. For the purposes of determining the amount of such liability and obligation of the plan, earnings and forfeitures, gains and losses, regular interest, interest credits, or dividends that would have accrued on the employee and employer contributions that are paid by the employer pursuant to this section shall not be included.

(c) The amount required pursuant to subdivision (b) of this subsection shall be paid to the retirement system as soon as reasonably practicable following the date of reemployment, but must be paid within eighteen months of the date the board notifies the employer of the amount due. If the employer fails to pay the required amount within such eighteen-month period, then the employer is also responsible for any actuarial costs and interest on actuarial costs that accrue from eighteen months after the date the employer is notified by the board until the date the amount is paid.

(d) The retirement board may adopt and promulgate rules and regulations to carry out this subsection, including, but not limited to, rules and regulations on:

(i) How and when the employee and employer must notify the retirement system of a period of military service;

(ii) The acceptable methods of payment;

(iii) Determining the service and compensation upon which the contributions must be made;

(iv) Accelerating the payment from the employer due to unforeseen circumstances that occur before payment is made pursuant to this section, including, but not limited to, the employee's termination or retirement or the employer's reorganization, consolidation, merger, or closing; and

(v) The documentation required to substantiate that the individual was reemployed pursuant to 38 U.S.C. 4301 et seq.

(3) This section only applies to military service that falls within the definition of uniformed service under 38 U.S.C. 4301 et seq. Military service does not include service provided pursuant to sections 55-101 to 55-181.

**Source:** Laws 1963, c. 532, § 25, p. 1676; Laws 1994, LB 833, § 52; Laws 1996, LB 847, § 47; Laws 1999, LB 703, § 26; Laws 2004, LB 1097, § 37; Laws 2017, LB415, § 51; Laws 2018, LB1005, § 48.  
Operative date July 19, 2018.

**ARTICLE 14**  
**PUBLIC MEETINGS**

## Section

- 84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.
- 84-1413. Meetings; minutes; roll call vote; secret ballot; when.

**84-1411 Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.**

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;



(d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, of the governing body of a public power and irrigation district, or of the Nebraska Brand Committee may be held by telephone conference call if:

(a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, Nebraska Brand Committee, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member, a council member, a member of a community college board of governors, a member of the governing body of a public power district, a member of the governing body of a public power and irrigation district, a member of the Nebraska Brand Committee, or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than two hours; and

(h) No more than one-half of the board's, council's, governing body's, committee's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

**Source:** Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2; Laws 2012, LB735, § 1; Laws 2013, LB510, § 1; Laws 2017, LB318, § 1.

#### Cross References

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

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**Municipal Cooperative Financing Act**, see section 18-2401.

#### **84-1413 Meetings; minutes; roll call vote; secret ballot; when.**

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body

which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

**Source:** Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3; Laws 2015, LB365, § 2; Laws 2016, LB876, § 1.

## ARTICLE 15

### PUBLIC EMPLOYEES RETIREMENT BOARD

#### Section

- 84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; vacancy; expenses; removal.
- 84-1503. Board; duties; director; duties.
- 84-1505. Deferred compensation; treatment; investment.
- 84-1514. Class V Retirement System Payment Processing Fund; created; use; investment; transfers of funds; liability.

**84-1501 Public Employees Retirement Board; created; members; qualifications; appointment; terms; vacancy; expenses; removal.**

(1) The Public Employees Retirement Board is hereby established.

(2)(a) The board shall consist of eight appointed members as described in this subsection and the state investment officer as a nonvoting, ex officio member. Six of the appointed members shall be active or retired participants in the retirement systems administered by the board, and two of the appointed members (i) shall not be employees of the State of Nebraska or any of its political subdivisions and (ii) shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan.

(b) The six appointed members who are participants in the systems shall be as follows:

(i) Two of the appointed members shall be participants in the School Employees Retirement System of the State of Nebraska and shall include one administrator and one teacher;

(ii) One of the appointed members shall be a participant in the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(iii) One of the appointed members shall be a participant in the Nebraska State Patrol Retirement System;

(iv) One of the appointed members shall be a participant in the Retirement System for Nebraska Counties; and

(v) One of the appointed members shall be a participant in the State Employees Retirement System of the State of Nebraska.

(c) Appointments to the board shall be made by the Governor and shall be subject to the approval of the Legislature. All appointed members shall be citizens of the State of Nebraska.

(3)(a) Except as otherwise provided in this subsection, all members shall serve for terms of five years or until a successor has been appointed and qualified. The terms shall begin on January 1 of the appropriate year.

(b) To ensure an experienced and knowledgeable board, the terms of the appointed members shall be staggered as follows:

(i) One of the two members described in subdivisions (2)(a)(i) and (ii) of this section shall be appointed to serve for a five-year term which begins in 2017;

(ii) One of the two members described in subdivisions (2)(a)(i) and (ii) of this section shall be appointed to serve for a five-year term which begins in 2018;

(iii) The participant in the School Employees Retirement System of the State of Nebraska who is a teacher shall be appointed for a five-year term which begins in 2019;

(iv) The participant in the School Employees Retirement System of the State of Nebraska who is an administrator and the participant in the State Employees Retirement System of the State of Nebraska shall be appointed for a five-year term which begins in 2020;

(v) The participant in the Retirement System for Nebraska Counties and the participant in the Nebraska Judges Retirement System shall be appointed to serve for a five-year term which begins in 2021; and

(vi) The participant in the Nebraska State Patrol Retirement System shall be appointed to serve for a three-year term which begins in 2020, and his or her successor shall be appointed to serve for a five-year term which begins in 2023.

(4) In the event of a vacancy in office, the Governor shall appoint a person to serve the unexpired portion of the term subject to the approval of the Legislature.

(5) The appointed members of the board may be removed by the Governor for cause after notice and an opportunity to be heard.

(6) The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1971, LB 987, § 1; Laws 1973, LB 250, § 1; Laws 1975, LB 36, § 1; Laws 1981, LB 204, § 216; Laws 1987, LB 59, § 1; Laws 1989, LB 418, § 1; Laws 1996, LB 847, § 51; Laws 1997, LB 623, § 46; Laws 2004, LB 1097, § 38; Laws 2005, LB 364, § 20; Laws 2011, LB509, § 50; Laws 2016, LB447, § 46.

#### Cross References

Judges Retirement Act, see section 24-701.01.

**84-1503 Board; duties; director; duties.**

(1) It shall be the duty of the Public Employees Retirement Board:

(a) To administer the retirement systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act. The agency for the administration of the retirement systems and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems;

(b) To appoint a director to administer the systems under the direction of the board. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The director shall be qualified by training and have at least five years of experience in the administration of a qualified public or private employee retirement plan. The director shall not be a member of the board. The salary of the director shall be set by the board. The director shall serve without term and may be removed by the board;

(c) To provide for an equitable allocation of expenses among the retirement systems administered by the board, and all expenses shall be provided from the investment income earned by the various retirement funds unless alternative sources of funds to pay expenses are specified by law;

(d) To administer the deferred compensation program authorized in section 84-1504;

(e) To hire an attorney, admitted to the Nebraska State Bar Association, to advise the board in the administration of the retirement systems listed in subdivision (a) of this subsection;

(f) To hire an internal auditor to perform the duties described in section 84-1503.04 who meets the minimum standards as described in section 84-304.03;

(g) To adopt and implement procedures for reporting information by employers, as well as testing and monitoring procedures in order to verify the accuracy of such information. The information necessary to determine membership shall be provided by the employer. The board may adopt and promulgate rules and regulations and prescribe such forms necessary to carry out this subdivision. Nothing in this subdivision shall be construed to require the board to conduct onsite audits of political subdivisions for compliance with statutes, rules, and regulations governing the retirement systems listed in subdivision (1)(a) of this section regarding membership and contributions; and

(h) To prescribe and furnish forms for the public retirement system plan reports required to be filed pursuant to sections 2-3228, 12-101, 14-567, 14-1805.01, 14-2111, 15-1017, 16-1017, 16-1037, 19-3501, 23-1118, 23-3526, 71-1631.02, and 79-987 through December 31, 2017.

(2) In administering the retirement systems listed in subdivision (1)(a) of this section, it shall be the duty of the board:

(a) To determine, based on information provided by the employer, the prior service annuity, if any, for each person who is an employee of the county on the date of adoption of the retirement system;

(b) To determine the eligibility of an individual to be a member of the retirement system and other questions of fact in the event of a dispute between an individual and the individual's employer;

(c) To adopt and promulgate rules and regulations, as the board may deem necessary, for the management of the board;

(d) To keep a complete record of all proceedings taken at any meeting of the board;

(e) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, actuarial services on behalf of the State of Nebraska as may be necessary in the administration and development of the retirement systems, including, but not limited to, preparation of an annual actuarial valuation report of each of the defined benefit and cash balance plans administered by the board. Such annual valuation reports shall be presented by the actuary to the Nebraska Retirement Systems Committee of the Legislature at a public hearing or hearings. Any contract for actuarial services shall contain a provision allowing the actuary, without prior approval of the board, to perform actuarial studies of the systems as requested by entities other than the board, if notice, which does not identify the entity or substance of the request, is given to the board, all costs are paid by the requesting entity, results are provided to the board, the Nebraska Retirement Systems Committee of the Legislature, and the Legislative Fiscal Analyst upon being made public, and such actuarial studies do not interfere with the actuary's ongoing responsibility to the board. The term of the contract shall be for up to three years. A competitive, formal, and sealed bidding process shall be completed at least once every three years, unless the board determines that such a process would not be cost effective under the circumstances and that the actuarial services performed have been satisfactory, in which case the contract may also contain an option for renewal without a competitive, formal, and sealed bidding process for up to three additional years. An actuary under contract for the State of Nebraska shall be a member of the American Academy of Actuaries and meet the academy's qualification standards to render a statement of actuarial opinion;

(f) To direct the State Treasurer to transfer funds, as an expense of the retirement systems, to the Legislative Council Retirement Study Fund. Such transfer shall occur beginning on or after July 1, 2005, and at intervals of not less than five years and not more than fifteen years and shall be in such amounts as the Legislature shall direct;

(g) To adopt and promulgate rules and regulations, as the board may deem necessary, to carry out the provisions of each retirement system described in subdivision (1)(a) of this section, which includes, but is not limited to, the crediting of military service, direct rollover distributions, and the acceptance of rollovers;

(h) To obtain, by a competitive, formal, and sealed bidding process through the materiel division of the Department of Administrative Services, auditing services for a separate compliance audit of the retirement systems to be completed by December 31, 2020, and from time to time thereafter at the request of the Nebraska Retirement Systems Committee of the Legislature, to be completed not more than every four years but not less than every ten years. The compliance audit shall be in addition to the annual audit conducted by the Auditor of Public Accounts. The compliance audit shall include, but not be limited to, an examination of records, files, and other documents and an evaluation of all policies and procedures to determine compliance with all state and federal laws. A copy of the compliance audit shall be given to the

Governor, the board, and the Nebraska Retirement Systems Committee of the Legislature and shall be presented to the committee at a public hearing;

(i) To adopt and promulgate rules and regulations, as the board may deem necessary, for the adjustment of contributions or benefits, which includes, but is not limited to: (i) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (ii) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment to contributions or benefits; (iii) establishing materiality and de minimus amounts for agency transactions, adjustments, and inactive account closures; and (iv) notice provided to all affected persons. Following an adjustment, a timely notice shall be sent that describes the adjustment and the process for disputing an adjustment to contributions or benefits;

(j) To make a thorough investigation through the director or the director's designee, of any overpayment of a benefit, when in the judgment of the director such investigation is necessary, including, but not limited to, circumstances in which benefit payments are made after the death of a member or beneficiary and the retirement system is not made aware of such member's or beneficiary's death. In connection with any such investigation, the board, through the director or the director's designee, shall have the power to compel the attendance of witnesses and the production of books, papers, records, and documents, whether in hardcopy, electronic form, or otherwise, and issue subpoenas for such purposes. Such subpoenas shall be served in the same manner and have the same effect as subpoenas from district courts; and

(k) To administer all retirement system plans in a manner which will maintain each plan's status as a qualified plan pursuant to the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(25) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; section 401(a)(37) of the Internal Revenue Code relating to the death benefit of a member whose death occurs while performing qualified military service; and section 401(a) of the Internal Revenue Code by meeting the requirements of section 414(d) of the Internal Revenue Code relating to the establishment of retirement plans for governmental employees of a state or political subdivision thereof. The board may adopt and promulgate rules and regulations necessary or appropriate to maintain such status including, but not limited to, rules or regulations which restrict discretionary or optional contributions to a plan or which limit distributions from a plan.

(3) By March 31 of each year, the board 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 board's funding policy, the administrative costs and other fees associated with each fund and plan overseen by the board, member education and informational programs, the director's duties and limitations, an organizational structure of the office of the Nebraska Public Employees Retirement Systems, and the internal control structure of such office to ensure compliance with state and federal laws.

(4)(a) Beginning in 2016, and at least every four years thereafter in even-numbered years or at the request of the Nebraska Retirement Systems Committee of the Legislature, the board shall obtain an experience study. Within thirty business days after presentation of the experience study to the board, the actuary shall present the study to the Nebraska Retirement Systems Committee at a public hearing. If the board does not adopt all of the recommendations in the experience study, the board shall provide a written explanation of its decision to the Nebraska Retirement Systems Committee and the Governor. The explanation shall be delivered within ten business days after formal action by the board to not adopt one or more of the recommendations.

(b) The director shall provide an electronic copy of the first draft and a final draft of the experience study and annual valuation reports to the Nebraska Retirement Systems Committee and the Governor when the director receives the drafts from the actuary. The drafts shall be deemed confidential information. The draft copies obtained by the Nebraska Retirement Systems Committee and the Governor pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09.

(c) For purposes of this subsection, business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. A business day shall not include a Saturday or a Sunday or a day during which the Nebraska Public Employees Retirement Systems office is closed.

(5) It shall be the duty of the board to direct the State Treasurer to transfer funds, as an expense of the retirement system provided for under the Class V School Employees Retirement Act, to and from the Class V Retirement System Payment Processing Fund and the Class V School Employees Retirement Fund for the benefit of a retirement system provided for under the Class V School Employees Retirement Act to implement the provisions of section 79-986. The agency for the administration of this provision and under the direction of the board shall be known and may be cited as the Nebraska Public Employees Retirement Systems.

**Source:** Laws 1971, LB 987, § 3; Laws 1973, LB 216, § 3; Laws 1973, LB 498, § 10; Laws 1979, LB 416, § 3; Laws 1983, LB 70, § 1; Laws 1984, LB 751, § 13; Laws 1986, LB 311, § 40; Laws 1987, LB 549, § 14; Laws 1988, LB 1170, § 22; Laws 1991, LB 549, § 74; Laws 1992, LB 672, § 33; Laws 1994, LB 833, § 54; Laws 1994, LB 1306, § 11; Laws 1995, LB 502, § 3; Laws 1996, LB 847, § 52; Laws 1996, LB 1076, § 44; Laws 1998, LB 1191, § 78; Laws 1999, LB 849, § 33; Laws 2000, LB 1192, § 25; Laws 2001, LB 808, § 21; Laws 2002, LB 407, § 63; Laws 2003, LB 451, § 35; Laws 2005, LB 503, § 19; Laws 2011, LB474, § 14; Laws 2011, LB509, § 51; Laws 2012, LB916, § 43; Laws 2013, LB263, § 43; Laws 2014, LB1042, § 11; Laws 2015, LB40, § 16; Laws 2016, LB447, § 47; Laws 2017, LB415, § 52; Laws 2018, LB1005, § 49.

Operative date July 19, 2018.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

**County Employees Retirement Act**, see section 23-2331.

**Judges Retirement Act**, see section 24-701.01.

**Nebraska State Patrol Retirement Act**, see section 81-2014.01.



School Employees Retirement Act, see section 79-901.

State Employees Retirement Act, see section 84-1331.

#### **84-1505 Deferred compensation; treatment; investment.**

(1) 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 State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan. All such assets held in trust 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 be the custodian of the funds and securities of the deferred compensation plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. All disbursements therefrom shall be paid by him or her only upon vouchers duly authorized by the retirement board. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31 of each year.

(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 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.

**Source:** Laws 1973, LB 428, § 2; R.S.Supp.,1974, § 84-1329.02; Laws 1994, LB 460, § 2; Laws 1996, LB 847, § 56; Laws 1997, LB 623, § 50; Laws 1998, LB 1191, § 80; Laws 2012, LB916, § 44; Laws 2015, LB40, § 17.

#### **Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **84-1514 Class V Retirement System Payment Processing Fund; created; use; investment; transfers of funds; liability.**

The Class V Retirement System Payment Processing Fund is created for the purpose of transferring funds as specified in section 79-986 and for paying expenses associated with the transfer of such funds. The fund shall consist of the amounts transferred from the custodial bank that holds the assets of a retirement system provided for under the Class V School Employees Retirement Act to make payments for purposes specified in the Class V School Employees Retirement Act and to pay administrative expenses incurred under this section by the Public Employees Retirement Board. The fund shall reside with the Nebraska Public Employees Retirement Systems for the sole purpose of conducting the transactions necessary to implement 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 Nebraska Public Employees Retirement Systems, Public Employees Retirement Board, State Treasurer, Nebraska Investment Council, and employ-

ees of each of such agencies shall not have responsibility to review or verify the accuracy of the requests for transfer of funds for payments and shall not be liable for any claims, suits, losses, damages, fees, and costs related to the payment of such benefits, refunds, and expenses.

**Source:** Laws 2016, LB447, § 48.

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.

## ARTICLE 16

### NEBRASKA STATE INSURANCE PROGRAM

#### (a) GENERAL PROVISIONS

Section

84-1613. State Employees Insurance Fund; created; use; investment.

#### (b) DIRECT PRIMARY CARE PILOT PROGRAM ACT

84-1618. Act, how cited.

84-1619. Terms, defined.

84-1620. Direct Primary Care Pilot Program; established.

84-1621. Department; duties.

84-1622. Participation.

84-1623. Plan administrator; duties.

84-1624. Direct provider; participation requirements; monthly payment.

84-1625. Care quality and patient satisfaction measurements.

84-1626. Report.

84-1627. Rules and regulations.

#### (a) GENERAL PROVISIONS

#### **84-1613 State Employees Insurance Fund; created; use; investment.**

The State Employees Insurance Fund is established. The fund shall be administered by the personnel division of the Department of Administrative Services. All funds appropriated to pay the state's share of the cost of the coverages provided by sections 84-1601 to 84-1615 and all payroll deductions made under sections 84-1601 to 84-1615 shall be credited to the fund. The division shall make premium payments to the carrier, carriers, or combinations of carriers selected under section 84-1603 from this fund. The division may also use the fund to make incentive payments to state employees pursuant to section 44-1413.

Any funds in the State Employees Insurance 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 or before October 1, 2001, the State Treasurer shall transfer one million five hundred thousand dollars from the excess state share of life insurance history money of the State Employees Insurance Fund to the Workers' Compensation Claims Revolving Fund.

**Source:** Laws 1973, LB 516, § 11; Laws 1981, LB 273, § 9; R.S.1943, (1988), § 44-1630; Laws 1989, LB 303, § 6; Laws 1994, LB 1066, § 133; Laws 1996, LB 1252, § 6; Laws 2000, LB 654, § 52; Laws 2001, LB 541, § 7; Laws 2018, LB1119, § 26.  
Effective date July 19, 2018.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## (b) DIRECT PRIMARY CARE PILOT PROGRAM ACT

**84-1618 Act, how cited.**

Sections 84-1618 to 84-1627 shall be known and may be cited as the Direct Primary Care Pilot Program Act.

**Source:** Laws 2018, LB1119, § 1.  
Effective date July 19, 2018.

**84-1619 Terms, defined.**

For purposes of the Direct Primary Care Pilot Program Act:

- (1) Department means the Department of Administrative Services;
- (2) Direct primary care health plan means a health plan which includes primary care services provided by a participating provider, pharmaceutical care as defined in section 38-2831 provided by a licensed pharmacist, and health care coverage for medical specialists, hospitals, pharmacy, and other medical coverage the department deems appropriate;
- (3) Direct provider has the same meaning as in section 71-9503;
- (4) Enrollee means a state employee or his or her dependent who is enrolled in the pilot program;
- (5) Nebraska State Insurance Program means the health insurance offered to state employees and their dependents under sections 84-1601 to 84-1615;
- (6) Participating provider means a direct provider who is participating in the pilot program;
- (7) Pilot program means the Direct Primary Care Pilot Program established under the Direct Primary Care Pilot Program Act;
- (8) Plan administrator means the entity with which the department contracts to administer the direct primary care health plan;
- (9) Primary care has the same meaning as in section 71-9503; and
- (10) State employee means an employee participating in the Nebraska State Insurance Program.

**Source:** Laws 2018, LB1119, § 2.  
Effective date July 19, 2018.

**84-1620 Direct Primary Care Pilot Program; established.**

The Direct Primary Care Pilot Program is established within the Nebraska State Insurance Program. The pilot program shall begin in fiscal year 2019-20 and continue through fiscal year 2022-23. Through the pilot program the Nebraska State Insurance Program shall include direct primary care health plans. Thereafter the department may continue to offer the direct primary care health plans.

**Source:** Laws 2018, LB1119, § 3.  
Effective date July 19, 2018.

**84-1621 Department; duties.**

For the pilot program, the department shall provide enrollees at least two different direct primary care health plans including a high-deductible option and a low-deductible option for health care coverage outside of primary care. The department may include wellness incentives in the direct primary care health plans.

**Source:** Laws 2018, LB1119, § 4.  
Effective date July 19, 2018.

#### **84-1622 Participation.**

A state employee may participate at open enrollment in the pilot program on a first-come, first-served basis dependent on participation by participating providers and limitations on enrollees served per participating providers.

**Source:** Laws 2018, LB1119, § 5.  
Effective date July 19, 2018.

#### **84-1623 Plan administrator; duties.**

Any plan administrator for health care plans offered under the Nebraska State Insurance Program shall cooperate with the implementation of the pilot program and shall share real-time claims data for state employees participating in the pilot program with participating providers.

**Source:** Laws 2018, LB1119, § 6.  
Effective date July 19, 2018.

#### **84-1624 Direct provider; participation requirements; monthly payment.**

(1) To qualify for participation in the pilot program, a direct provider shall:

- (a) Provide primary care to an enrollee;
- (b) Coordinate care across all care settings;
- (c) Oversee transitions in care between settings; and
- (d) Minimize the risk of gaps in care.

(2) The participating providers shall receive a monthly payment of a per-member, per-month fee for each enrollee for any month or portion of a month in which he or she is enrolled in the pilot program.

**Source:** Laws 2018, LB1119, § 7.  
Effective date July 19, 2018.

#### **84-1625 Care quality and patient satisfaction measurements.**

A participating provider shall continuously monitor care quality in accordance with a standardized set of care quality and patient satisfaction measurements. Such care quality measurements shall include, but not be limited to, the following:

(1) Patient engagement measurement, including, but not limited to, the percentage of enrollees who have:

- (a) Completed a health risk assessment; and
- (b) Completed a face-to-face visit to the enrollee's participating provider;

(2) Prevention measurement, including, but not limited to, the percentage of enrollees who have received appropriate screenings for their age or gender; and

(3) Chronic disease management.

**Source:** Laws 2018, LB1119, § 8.  
Effective date July 19, 2018.

**84-1626 Report.**

Beginning in fiscal year 2021-22, the department shall provide a report to the Governor and the Legislature by September 1 of each year. The report shall evaluate the clinical and financial performance of the pilot program. The report shall be submitted to the Legislature electronically.

**Source:** Laws 2018, LB1119, § 9.  
Effective date July 19, 2018.

**84-1627 Rules and regulations.**

The department may adopt and promulgate rules and regulations as necessary to implement the Direct Primary Care Pilot Program Act.

**Source:** Laws 2018, LB1119, § 10.  
Effective date July 19, 2018.



## CHAPTER 85

### STATE UNIVERSITY, STATE COLLEGES, AND POSTSECONDARY EDUCATION

#### Article.

1. University of Nebraska. 85-106.06 to 85-177.
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#### ARTICLE 1

#### UNIVERSITY OF NEBRASKA

#### Section

- 85-106.06. Board of Regents; chief executive officer; chief administrative officers; appointment; public notice.
- 85-119. Board of Regents; Nebraska Innovation Campus; report to Legislature; contents.
- 85-122. University funds; designation; investment; disbursements; travel expenses.
- 85-123.01. University Trust Fund, defined; management and investment.
- 85-173. Defunct postsecondary institution; records; University of Nebraska-Lincoln; depository.
- 85-174. Defunct postsecondary institution; records; duties of registrar.
- 85-175. Repealed. Laws 2017, LB512, § 42.
- 85-176. College of Law; state publications; number furnished free.
- 85-177. College of Law; state publications; additional copies; requisition.

#### **85-106.06 Board of Regents; chief executive officer; chief administrative officers; appointment; public notice.**

(1) The chief executive officer of the University of Nebraska shall be appointed by the Board of Regents using the enhanced public scrutiny process in subsection (3) of this section, hold office at the pleasure of the board, and receive such compensation as the board may prescribe.

(2) The University of Nebraska-Lincoln, the University of Nebraska at Omaha, the University of Nebraska at Kearney, the University of Nebraska Medical Center, and any other postsecondary educational institution designated by the

Legislature to be a part of the University of Nebraska shall be governed by the Board of Regents, and each shall be managed and administered in the manner prescribed by the board. The chief administrative officer of each such postsecondary educational institution shall be appointed, hold office, and be compensated as prescribed by the Board of Regents. The appointment shall be made using the enhanced public scrutiny process in subsection (4) of this section.

(3)(a) The Board of Regents shall provide public notice of a priority candidate for the position of chief executive officer of the University of Nebraska to be appointed pursuant to subsection (1) of this section. The public notice shall be provided at least thirty days before the date of the public meeting of the Board of Regents at which a final action or vote is to be taken on the employment of the priority candidate. The Board of Regents shall make available the employment application, resume, reference letters, and school transcripts related to the priority candidate prior to or at the time of providing such public notice.

(b) Prior to such public meeting and after the notice is provided, the Board of Regents shall provide a public forum at each campus of the University of Nebraska for the priority candidate for the position of chief executive officer to provide the public, including the media and students, faculty, and staff of the University of Nebraska, with an opportunity to meet and ask questions or provide input regarding the priority candidate.

(4)(a) The chief executive officer of the University of Nebraska shall provide public notice of a priority candidate for a position appointed pursuant to subsection (2) of this section. The chief executive officer shall not make a final appointment for any such position until at least thirty days have elapsed after the notice is provided. The chief executive officer shall make available the employment application, resume, reference letters, and school transcripts related to the priority candidate prior to or at the time of providing such public notice.

(b) The chief executive officer shall, within such thirty-day period, provide a public forum at the applicable campus of the University of Nebraska for the priority candidate for a position appointed pursuant to subsection (2) of this section to provide the public, including the media and students, faculty, and staff of the University of Nebraska, with an opportunity to meet and ask questions or provide input regarding the priority candidate.

(5) For purposes of this section, priority candidate means an individual preliminarily selected to fill a vacancy in a position appointed pursuant to subsection (1) of this section subject to a final vote of the Board of Regents or to fill a vacancy in a position appointed pursuant to subsection (2) of this section.

**Source:** Laws 2003, LB 68, § 2; Laws 2016, LB1109, § 2.

### **85-119 Board of Regents; Nebraska Innovation Campus; report to Legislature; contents.**

The Board of Regents of the University of Nebraska approved the creation of the Nebraska Innovation Campus in 2009. The objective of the Nebraska Innovation Campus is to leverage the research and talent of the University of Nebraska to produce economic development for the State of Nebraska. The Board of Regents subsequently created the Nebraska Innovation Campus Development Corporation whose function is to provide strategic direction and oversight over the development of the Nebraska Innovation Campus.



The Legislature finds that innovation is increasingly important in the creation of new companies and the success of established ones. The Legislature acknowledges the importance of achieving the objective of the Nebraska Innovation Campus which will require a long-term strategy and may require continuing state support.

The Legislature determines that quantifiable measurements and benchmarks are required to track and evaluate the performance of the Nebraska Innovation Campus and its development corporation.

The following measurements regarding the Nebraska Innovation Campus shall be reported to the Legislature by the Board of Regents, to the extent the information is not confidential information of a private sector company:

(1) The percentage of investments by the state and university compared to private sector investments;

(2) The number of square feet of construction;

(3) The number of private sector companies located on Nebraska Innovation Campus;

(4) The number of private sector jobs located on Nebraska Innovation Campus;

(5) The amount of private sector research funding to the university attributable to Nebraska Innovation Campus;

(6) The number of internships or other employment opportunities provided by private sector companies at Nebraska Innovation Campus to university students;

(7) The percentage of facilities leased by private sector companies;

(8) The number of new businesses started or supported at Nebraska Innovation Campus;

(9) The number of conferences and participants at Nebraska Innovation Campus; and

(10) The background and credentials of the appointments to the Nebraska Innovation Campus Development Corporation Board of Directors.

The report shall be submitted electronically to the Clerk of the Legislature by December 1 of each year.

**Source:** Laws 2016, LB1093, § 5.

**85-122 University funds; designation; investment; disbursements; travel expenses.**

The several funds for the support of the university shall be constituted and designated as follows: (1) The Permanent Endowment Fund; (2) the Temporary University Fund; (3) the University Cash Fund; (4) the United States Morrill Fund; (5) the United States Experiment Station Fund; (6) the University Trust Fund; (7) the United States Agricultural Extension Fund; (8) the Veterinary School Fund; (9) the University of Nebraska at Omaha Cash Fund; (10) the University of Nebraska at Omaha Trust Fund; (11) the University of Nebraska at Kearney Cash Fund; (12) the University of Nebraska at Kearney Trust Fund; (13) the Agricultural Field Laboratory Fund; (14) the Animal Research and Diagnosis Revolving Fund; (15) the University Facility Improvement Fund; (16) the University of Nebraska Eppley Science Hall Construction Fund; and (17) the University Facilities Fund. No portion of the funds designated above

derived from taxation shall be disbursed for mileage or other traveling expenses except as authorized by sections 81-1174 to 81-1177. No expenditures shall be made for or on behalf of the School of Veterinary Medicine and Surgery except from money appropriated to the Veterinary School Fund. Any money in the funds designated in this section 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 as provided in sections 85-123.01, 85-125, 85-192, and 85-1,123.

**Source:** Laws 1869, § 21, p. 177; Laws 1877, § 1, p. 57; Laws 1899, c. 76, § 1, p. 325; R.S.1913, § 7100; C.S.1922, § 6732; C.S.1929, § 85-118; Laws 1933, c. 96, § 23, p. 400; Laws 1941, c. 180, § 11, p. 707; C.S.Supp.,1941, § 85-118; R.S.1943, § 85-122; Laws 1945, c. 257, § 1, p. 797; Laws 1949, c. 312, § 1, p. 1030; Laws 1951, c. 344, § 1, p. 1131; Laws 1955, c. 350, § 5, p. 1072; Laws 1969, c. 584, § 122, p. 2425; Laws 1983, LB 410, § 2; Laws 1986, LB 842, § 2; Laws 1987, LB 218, § 2; Laws 1988, LB 864, § 67; Laws 1989, LB 247, § 20; Laws 1990, LB 1220, § 2; Laws 1992, Third Spec. Sess., LB 9, § 2; Laws 1994, LB 1066, § 135; Laws 2011, LB378, § 31; Laws 2012, LB710, § 1; Laws 2018, LB1005, § 50.

Operative date July 19, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **85-123.01 University Trust Fund, defined; management and investment.**

(1) The University Trust Fund shall consist of all property, real or personal, acquired by the Board of Regents of the University of Nebraska by donation or bequest to it, including money derived as principal from the sale of land or other property so acquired or derived.

(2) The University Trust Fund shall be held, managed, and invested in such manner as directed by the Board of Regents of the University of Nebraska. No money in the fund shall be held, managed, or invested by the State Treasurer or the state investment officer pursuant to the Nebraska Capital Expansion Act or the Nebraska State Funds Investment Act.

**Source:** Laws 1945, c. 257, § 3, p. 798; Laws 1959, c. 263, § 22, p. 950; Laws 1967, c. 622, § 1, p. 2085; Laws 1969, c. 584, § 123, p. 2425; Laws 2018, LB1005, § 51.

Operative date July 19, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **85-173 Defunct postsecondary institution; records; University of Nebraska-Lincoln; depository.**

(1) Except as provided in subsection (2) of this section, the trustees or officers of any postsecondary institution, upon going out of existence or ceasing to function as a postsecondary institution, may turn over its student records to the central depository maintained by the office of registrar of the University of Nebraska-Lincoln as provided in section 85-174.

(2) The trustees or officers of any for-profit postsecondary institution as defined in section 85-2403, upon going out of existence or ceasing to function as a postsecondary institution, shall turn over its student records to the central depository maintained by the office of registrar of the University of Nebraska-Lincoln as provided in section 85-174.

**Source:** Laws 1937, c. 179, § 1, p. 709; C.S.Supp.,1941, § 85-179; R.S. 1943, § 85-173; Laws 2017, LB512, § 21.

#### **85-174 Defunct postsecondary institution; records; duties of registrar.**

The office of registrar of the University of Nebraska-Lincoln is hereby designated the central depository for the records of postsecondary institutions in this state that have ceased to exist or may cease to exist in the future. The registrar of the University of Nebraska-Lincoln shall, where possible, collect the records of such extinct postsecondary institution and have the supervision, care, custody, and control of such records. The registrar having the records of such postsecondary institutions, if any, shall, when requested, prepare transcripts of such records which may at any time become necessary to the former student for further scholastic work at other postsecondary institutions or for certification for teaching or other professional positions. Whenever such transcript is made, and after it has been compared with the original, it shall be certified by the registrar and shall thereafter be considered and accepted as evidence and, for all other purposes, the same as the original could be. For the preparation of such transcript, the registrar may charge a nominal fee for services rendered.

**Source:** Laws 1937, c. 179, § 2, p. 709; C.S.Supp.,1941, § 85-180; R.S. 1943, § 85-174; Laws 2017, LB512, § 22.

#### **85-175 Repealed. Laws 2017, LB512, § 42.**

#### **85-176 College of Law; state publications; number furnished free.**

The following publications of the State of Nebraska shall, as they are from time to time issued, be delivered by the respective officer having custody thereof to the library of the College of Law of the University of Nebraska:

(1) The opinions of the Nebraska Supreme Court and Court of Appeals in either print or electronic format, or both, as determined by the Supreme Court;

(2) Five copies of the Opinions of the Attorney General, five copies of the Blue Book, and two copies each of the reports and recommendations of the Judicial Council and of the reports and recommendations of the Legislative Council;

(3) Copies of the session laws and the journal of the Legislature as provided in section 49-506;

(4) One copy each of the annual and biennial reports of the state officers who are required by law to make an annual or biennial report; and

(5) Statutes issued by the Supreme Court shall be requisitioned by the librarian of the College of Law, allowing ten copies for the library of the College of Law, five copies for the Legal Aid Bureau and the editors and staff of the Nebraska Law Review, one copy each for every full-time member of the law

faculty, and no more than fifteen copies for the university libraries, nonlaw faculty, and administrative officers of the university combined.

**Source:** Laws 1947, c. 185, § 1, p. 610; Laws 1951, c. 345, § 2, p. 1133; Laws 1961, c. 243, § 4, p. 727; Laws 1987, LB 572, § 8; Laws 1995, LB 271, § 9; Laws 2015, LB301, § 4.

**85-177 College of Law; state publications; additional copies; requisition.**

In order to enable the library of the College of Law to augment its collections, the librarian of the College of Law of the University of Nebraska is authorized to requisition from the respective officer having custody thereof up to one hundred copies of the following state publications: Nebraska Reports, Nebraska Appellate Reports, Legislative Journals, Session Laws, replacement volumes and supplements to the Revised Statutes, and Opinions of the Attorney General. The copies of the Legislative Journals and Session Laws may be provided in print or electronic format as the Secretary of State determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council. The opinions of the Supreme Court and the Court of Appeals may be provided in either print or electronic format, or both, as determined by the Supreme Court.

**Source:** Laws 1947, c. 185, § 2, p. 611; Laws 1951, c. 345, § 3, p. 1133; Laws 1961, c. 243, § 5, p. 727; Laws 1995, LB 271, § 10; Laws 2000, LB 534, § 8; Laws 2015, LB301, § 5.

**Cross References**

For other provisions for distribution of publications to College of Law, see sections 24-209, 49-506, and 49-617.

**ARTICLE 3  
STATE COLLEGES**

Section

85-308. State colleges; purpose; courses.

**85-308 State colleges; purpose; courses.**

The purpose of the state colleges is the training and instruction of persons, both male and female, in the arts of teaching and managing schools, the principles and practice of the various branches of learning taught in our public schools, and the arts and sciences generally. The Board of Trustees of the Nebraska State Colleges shall have power to prescribe, for the state colleges, such courses of instruction as will best fit such persons for teaching and managing the public schools, and their instruction in the arts and sciences generally as provided in sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

**Source:** Laws 1881, c. 78, sub. XIII, § 15, p. 376; R.S.1913, § 7072; Laws 1921, c. 65, § 1, p. 252; C.S.1922, § 6707; C.S.1929, § 85-316; Laws 1937, c. 212, § 5, p. 850; C.S.Supp.,1941, § 85-316; R.S. 1943, § 85-308; Laws 1949, c. 315, § 2(1), p. 1035; Laws 1969, c. 852, § 7, p. 3202; Laws 1978, LB 756, § 55; Laws 1996, LB 900, § 1078; Laws 2017, LB512, § 23.

## ARTICLE 4

## CAMPUS BUILDINGS AND FACILITIES

## Section

- 85-419. Construction and improvement projects; legislative findings.
- 85-421. University of Nebraska Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.
- 85-422. Board of Regents of the University of Nebraska; contracts authorized; limitations; powers.
- 85-423. State College Facilities Program of 2006; created; use of appropriations.
- 85-424. State College Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.
- 85-425. Board of Trustees of the Nebraska State Colleges; contracts authorized; limitations; powers.

**85-419 Construction and improvement projects; legislative findings.**

(1) The Legislature finds and determines that protecting investments in buildings through the completion of deferred maintenance, repair, renovation, and facility replacement construction projects is of critical importance to the State of Nebraska. The Legislature further recognizes that arresting the continued deterioration of buildings, limiting the effects of inflation on the costs of such deferred maintenance, repair, renovation, and facility replacement construction, and bringing such buildings into compliance with current health and safety requirements at the earliest possible time is necessary for protecting such investment in the buildings of the State of Nebraska. In order to accomplish these goals, it is necessary, desirable, and advisable that the Legislature provide for the receipt of funds for such purposes as soon as practicable with the repayment of such funds to be made over a period of years. The Legislature recognizes the commitment of (a) the Board of Regents of the University of Nebraska to provide matching funds up to eleven million dollars per year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2030, for a total of up to two hundred twenty-five million eight hundred thousand dollars to supplement amounts appropriated from the General Fund pursuant to section 85-421 and (b) the Board of Trustees of the Nebraska State Colleges to provide matching funds up to one million four hundred forty thousand dollars per year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2030, for a total of up to twenty-eight million eight hundred thousand dollars to supplement amounts appropriated from the General Fund pursuant to section 85-424.

(2) Sections 85-419 to 85-425 do not modify, reduce, or eliminate any provision of subsection (10) of section 85-1414 requiring the approval of the Coordinating Commission for Postsecondary Education for any deferred maintenance, repair, renovation, facility addition, or facility replacement construction project authorized by section 85-421 or 85-424 and undertaken by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

**Source:** Laws 2006, LB 605, § 1; Laws 2016, LB957, § 15.

**85-421 University of Nebraska Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.**

(1) The Legislature shall appropriate from the General Fund (a) an amount not less than five million five hundred thousand dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2009, and (b) an amount not less than eleven million dollars for each fiscal year for the period beginning with the fiscal year commencing July 1, 2009, and continuing through the fiscal year ending June 30, 2030, to the University of Nebraska Facilities Program of 2006 to be used by the Board of Regents of the University of Nebraska to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the University of Nebraska Facilities Program of 2006 at the end of each fiscal year until June 30, 2031, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the University of Nebraska Facilities Program of 2006 are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2030, nor shall the cumulative total of the General Fund appropriations for the program exceed two hundred forty-seven million five hundred thousand dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following University of Nebraska projects, the Board of Regents of the University of Nebraska is authorized to make expenditures from the University of Nebraska Facilities Program of 2006 for the following projects: (a) Deferred maintenance, repair, and renovation of University of Nebraska at Kearney Bruner Hall; (b) construction of University of Nebraska at Kearney campus-wide central utilities plant and system; (c) construction of facilities to replace University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Behlen, Brace, and Ferguson Halls; (d) construction of a facility to replace University of Nebraska-Lincoln Keim Hall or deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Keim Hall; (e) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Sheldon Memorial Art Gallery; (f) deferred maintenance, repair, and renovation of University of Nebraska-Lincoln Animal Science Complex; (g) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Poynter, Bennet, and Wittson Halls; (h) deferred maintenance, repair, and renovation of University of Nebraska Medical Center Eppley Institute for Research in Cancer and Allied Diseases or replacement if additional federal or private funds are received; (i) deferred maintenance, repair, and renovation of University of Nebraska Medical Center College of Dentistry; (j) deferred maintenance, repair, and renovation of University of Nebraska at Omaha Library; (k) deferred maintenance, repair, and renovation of University of Nebraska at Omaha utilities infrastructure; (l) University of Nebraska-Lincoln Scott Engineering Center; (m) University of Nebraska-Lincoln Nebraska Hall; (n) University of Nebraska-Lincoln Mabel Lee Hall/Henzlik Hall; (o) University of Nebraska Medical Center Wittson Hall-Phase I; (p) University of

Nebraska Medical Center Joseph D. & Millie E. Williams Science Hall (College of Pharmacy); (q) renovation of a privately funded acquisition at the University of Nebraska at Omaha; (r) University of Nebraska at Omaha Strauss Performing Arts Center; (s) University of Nebraska at Omaha Arts and Sciences Hall; and (t) University of Nebraska at Kearney Otto C. Olsen Building.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Regents of the University of Nebraska as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System through the University of Nebraska Facilities Program of 2006 or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(5) The Board of Regents of the University of Nebraska shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the University of Nebraska Facilities Program of 2006 and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-422 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the University of Nebraska and the Department of Administrative Services.

(6) The Board of Regents of the University of Nebraska shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

**Source:** Laws 2006, LB 605, § 3; Laws 2009, LB316, § 27; Laws 2016, LB957, § 16.

**85-422 Board of Regents of the University of Nebraska; contracts authorized; limitations; powers.**

(1) In order to accomplish any projects authorized by section 85-421, the Board of Regents of the University of Nebraska may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the University of Nebraska and providing for the long-term payment of the cost of such project from the University of Nebraska Facilities Program of 2006. In no case shall any such contract extend for a period beyond December 31, 2031, nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-419 and 85-421.

(2) The Board of Regents of the University of Nebraska shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Regents of the University of Nebraska as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Regents. The Board of Regents may also convey, lease, or lease back all or any part of the projects authorized by section 85-421 and the land on which such projects are situated to such person, firm, or corporation as the Board of Regents may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Regents.

(3) The Board of Regents of the University of Nebraska is authorized to make expenditures for the purposes stated in this section and section 85-421 from investment income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Regents under section 85-419 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any resolution, indenture, or other contract entered into by the Board of Regents as authorized by this section. The Board of Regents and the Department of Administrative Services shall, on or before January 1, 2007, enter into an agreement providing for the allocation and distribution of any balances existing in the University of Nebraska Facilities Program of 2006 or any other funds created as part of long-term contracts entered into by the Board of Regents pursuant to this section to the General Fund and any other funds designated by the Board of Regents as a source of funds for the match specified in section 85-419 either on December 31, 2031, or when all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to this section are discharged, whichever occurs first.

**Source:** Laws 2006, LB 605, § 4; Laws 2016, LB957, § 17.

**85-423 State College Facilities Program of 2006; created; use of appropriations.**

The State College Facilities Program of 2006 is created. All funds appropriated to the program by the Legislature shall be used exclusively for deferred maintenance, repair, renovation, and facility replacement construction projects authorized pursuant to section 85-424.

**Source:** Laws 2006, LB 605, § 5; Laws 2016, LB957, § 18.

**85-424 State College Facilities Program of 2006; appropriations; legislative intent; projects enumerated; accounting; status reports.**

(1) Beginning with the fiscal year commencing July 1, 2006, and continuing through the fiscal year ending June 30, 2030, the Legislature shall appropriate each fiscal year from the General Fund an amount not less than one million one hundred twenty-five thousand dollars to the State College Facilities Program of 2006 to be used by the Board of Trustees of the Nebraska State Colleges to accomplish projects as provided in this section. Through the allotment process established in section 81-1113, at a minimum, the Department of Administrative Services shall make appropriated funds available. Undisbursed appropriations balances existing in the State College Facilities Program of 2006 at the end of each fiscal year until June 30, 2031, shall be and are hereby reappropriated.

(2) The Legislature finds and determines that the projects funded through the program are of critical importance to the State of Nebraska. It is the intent of the Legislature that the appropriations to the program shall not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid but in no case shall such appropriations extend beyond the fiscal year ending June 30, 2030, nor shall the cumulative



total of the General Fund appropriations for the program exceed twenty-seven million dollars.

(3) Subject to the receipt of project approval from the Coordinating Commission for Postsecondary Education as required by subsection (10) of section 85-1414 for each of the following state college projects, the Board of Trustees of the Nebraska State Colleges is authorized to make expenditures from the State College Facilities Program of 2006 for the following state college projects: (a) Deferred maintenance, repair, and renovation of Chadron State College Academic/Administration Building; (b) design and placement of a new Peru State College emergency power generator; (c) replacement of existing Peru State College Al Wheeler Activity Center bleachers; (d) addition to and deferred maintenance, repair, and renovation of Peru State College Al Wheeler Activity Center; (e) addition to and deferred maintenance, repair, and renovation of Wayne State College Campus Services Building; (f) deferred maintenance, repair, and renovation of Wayne State College Rice Auditorium; (g) deferred maintenance, repair, and renovation of Wayne State College Memorial Stadium; (h) replacement of or deferred maintenance, repair, and renovation of Chadron State College stadium; (i) addition to and deferred maintenance, repair, and renovation of Peru State College Theatre/Event Center; (j) construction of a facility to replace Wayne State College Benthack Hall applied technology programmatic space; and (k) systemwide miscellaneous fire and life safety, energy conservation, deferred repair, federal Americans with Disabilities Act of 1990, and asbestos removal projects.

(4) Expenditures of matching funds provided for the projects listed in this section by the Board of Trustees of the Nebraska State Colleges as provided for in section 85-419 shall be accounted for in the Nebraska State Accounting System through the State College Facilities Program of 2006 or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(5) The Board of Trustees of the Nebraska State Colleges shall record and report, on the Nebraska State Accounting System, expenditure of amounts from the State College Facilities Program of 2006 and expenditure of proceeds arising from any contract entered into pursuant to this section and section 85-425 in such manner and format as prescribed by the Department of Administrative Services or according to some other reporting process mutually agreed upon by the state colleges and the Department of Administrative Services.

(6) The Board of Trustees of the Nebraska State Colleges shall provide to the Task Force for Building Renewal semiannual reports concerning the status of each project authorized by this section.

**Source:** Laws 2006, LB 605, § 6; Laws 2016, LB957, § 19.

**85-425 Board of Trustees of the Nebraska State Colleges; contracts authorized; limitations; powers.**

(1) In order to accomplish any projects authorized by section 85-424, the Board of Trustees of the Nebraska State Colleges may enter into contracts with any person, firm, or corporation providing for the implementation of any such project of the Nebraska state colleges and providing for the long-term payment of the cost of such project from the State College Facilities Program of 2006. In no case shall any such contract extend for a period beyond December 31, 2030,

nor shall any such contract exceed the repayment capabilities implicit in the funding streams authorized in sections 85-419 and 85-424.

(2) The Board of Trustees of the Nebraska State Colleges shall not pledge the credit of the State of Nebraska for the payment of any sum owing on account of such contract, except that there may be pledged for the payment of any such contract any appropriation specifically made by the Legislature for such purpose, together with such funds of the Board of Trustees as the board determines. No contract shall be entered into pursuant to this section without prior approval by resolution by the Board of Trustees. The Board of Trustees may also convey, lease, or lease back all or any part of the projects authorized by section 85-424 and the land on which such projects are situated to such person, firm, or corporation as the Board of Trustees may contract with pursuant to this section to facilitate the long-term payment of the cost of such projects. Any such conveyance or lease shall provide that when the cost of such projects has been paid, together with interest and other costs thereon, such projects and the land on which such projects are located shall become the property of the Board of Trustees.

(3) The Board of Trustees of the Nebraska State Colleges is authorized to make expenditures for the purposes stated in this section and section 85-424 from interest income balances in any fund created under the authority provided for in any contract or contracts authorized by this section. Any appropriated amounts and amounts designated or matched by the Board of Trustees under section 85-419 in excess of amounts required to meet debt service and any interest earnings derived from reserve funds or any other funds created under the authority provided for in any contract or contracts authorized by this section shall be accumulated and applied toward early retirement of debt as authorized under any resolution, indenture, or other contract entered into by the Board of Trustees as authorized by this section. The Board of Trustees and the Department of Administrative Services shall, on or before January 1, 2007, enter into an agreement providing for the allocation and distribution of any balances existing in the State College Facilities Program of 2006 or any other funds created as part of a long-term contract entered into by the Board of Trustees pursuant to this section to the General Fund and any other funds designated by the Board of Trustees as a source of funds for the match specified in section 85-419 either on December 31, 2030, or when all financial obligations incurred in the contracts entered into by the Board of Trustees pursuant to this section are discharged, whichever occurs first.

**Source:** Laws 2006, LB 605, § 7; Laws 2016, LB957, § 20.

## ARTICLE 5

### TUITION AND FEES AT STATE EDUCATIONAL INSTITUTIONS

#### Section

- 85-502. State postsecondary educational institution; residence requirements.  
 85-502.01. Public college or university; veteran; spouse or dependent of veteran; eligible recipient under federal law; resident student; requirements.

#### **85-502 State postsecondary educational institution; residence requirements.**

Rules and regulations established by the governing board of each state postsecondary educational institution shall require as a minimum that a person is not deemed to have established a residence in this state, for purposes of sections 85-501 to 85-504, unless:

(1) Such person is of legal age or is an emancipated minor and has established a home in Nebraska where he or she is habitually present for a minimum period of one hundred eighty days, with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(2) The parents, parent, or guardian having custody of a minor registering in the educational institution have established a home in Nebraska where such parents, parent, or guardian are or is habitually present with the bona fide intention to make this state their, his, or her permanent residence, supported by documentary proof. If a student has matriculated in any state postsecondary educational institution while his or her parents, parent, or guardian had an established home in this state, and the parents, parent, or guardian ceases to reside in the state, such student shall not thereby lose his or her resident status if such student has the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(3) Such student is of legal age and is a dependent for federal income tax purposes of a parent or former guardian who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(4) Such student is a nonresident of this state prior to marriage and marries a person who has established a home in Nebraska where he or she is habitually present with the bona fide intention of making this state his or her permanent residence, supported by documentary proof;

(5) Except as provided in subdivision (9) of this section, such student, if an alien, has applied to or has a petition pending with the United States Immigration and Naturalization Service to attain lawful status under federal immigration law and has established a home in Nebraska for a period of at least one hundred eighty days where he or she is habitually present with the bona fide intention to make this state his or her permanent residence, supported by documentary proof;

(6) Such student is a staff member or a dependent of a staff member of the University of Nebraska, one of the Nebraska state colleges, or one of the community college areas who joins the staff immediately prior to the beginning of a term from an out-of-state location;

(7) Such student is on active duty with the armed services of the United States and has been assigned a permanent duty station in Nebraska, or is a legal dependent of a person on active duty with the armed services of the United States assigned a permanent duty station in Nebraska;

(8) Such student is currently serving in the Nebraska National Guard; or

(9)(a) Such student resided with his or her parent, guardian, or conservator while attending a public or private high school in this state and:

(i) Graduated from a public or private high school in this state or received the equivalent of a high school diploma in this state;

(ii) Resided in this state for at least three years before the date the student graduated from the high school or received the equivalent of a high school diploma;

(iii) Registered as an entering student in a state postsecondary educational institution not earlier than the 2006 fall semester; and

(iv) Provided to the state postsecondary educational institution an affidavit stating that he or she will file an application to become a permanent resident at the earliest opportunity he or she is eligible to do so.

(b) If the parent, guardian, or conservator with whom the student resided ceases to reside in the state, such student shall not lose his or her resident status under this subdivision if the student has the bona fide intention to make this state his or her permanent residence, supported by documentary proof.

**Source:** Laws 1923, c. 57, § 4, p. 179; C.S.1929, § 85-504; R.S.1943, § 85-502; Laws 1951, c. 348, § 1, p. 1137; Laws 1961, c. 458, § 1, p. 1397; Laws 1965, c. 582, § 1, p. 1877; Laws 1971, LB 408, § 1; Laws 1980, LB 304, § 2; Laws 1982, LB 796, § 1; Laws 2006, LB 239, § 1; Laws 2016, LB734, § 1.

**85-502.01 Public college or university; veteran; spouse or dependent of veteran; eligible recipient under federal law; resident student; requirements.**

(1) A person who enrolls in a public college or university in this state and who is a veteran as defined in Title 38 of the United States Code and was discharged or released from a period of not fewer than ninety days of service in the active military, naval, or air service less than three years before the date of initial enrollment, a spouse or dependent of such a veteran, or an eligible recipient entitled to educational assistance as provided in 38 U.S.C. 3319 while the transferor is on active duty in the uniformed services or as provided in 38 U.S.C. 3311(b)(9), as such sections existed on January 1, 2017, shall be considered a resident student notwithstanding the provisions of section 85-502 if the person is (a) registered to vote in Nebraska and (b) demonstrates objective evidence of intent to be a resident of Nebraska.

(2) A person who is otherwise described in subsection (1) of this section and is under eighteen years of age is not required to comply with subdivision (1)(a) of this section.

(3) For purposes of this section, objective evidence of intent to be a resident of Nebraska includes either a Nebraska driver's license or state identification card or a Nebraska motor vehicle registration.

**Source:** Laws 2014, LB740, § 1; Laws 2015, LB109, § 1; Laws 2017, LB512, § 24.

## ARTICLE 9

### POSTSECONDARY EDUCATION

#### (b) ROLE AND MISSION ASSIGNMENTS

Section

85-917. Legislative intent.

85-933. Expenditures in conflict with role and mission assignments; prohibited.

85-949. State college system; role and mission assignments; board of trustees; adopt policies.

#### (j) FEDERAL EDUCATION LOAN

85-9,140. Federal education loan; information provided to student; liability of eligible institution.

#### (b) ROLE AND MISSION ASSIGNMENTS

##### **85-917 Legislative intent.**

The Legislature hereby declares that it is the intent and purpose of sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511 to provide statements of role and mission for the state's systems and institutions of postsecondary education which will:

- (1) Provide for a coordinated state system of postsecondary education;
- (2) Provide for the maintenance and development of quality postsecondary educational programs and services for all citizens in all regions of the state;
- (3) Insure student and community access to comprehensive educational programs;
- (4) Limit unnecessary program and facility duplication through a coordinated planning and review process;
- (5) Encourage statewide long-term academic and fiscal planning for postsecondary education in the state;
- (6) Establish a legislative review process to insure that (a) role and mission statements are updated as necessary and (b) postsecondary institutions are complying with role and mission assignments and are serving a valuable purpose to the state within their current role and mission assignments; and
- (7) Provide a mechanism for (a) implementing an extensive change in the scope, role, and mission of a campus, (b) closing a campus, (c) merging campuses, and (d) changing a campus to serve a completely different public purpose.

**Source:** Laws 1978, LB 756, § 1; Laws 1984, LB 981, § 18; Laws 1996, LB 900, § 1080; Laws 2017, LB512, § 25.

**85-933 Expenditures in conflict with role and mission assignments; prohibited.**

No funds generated or received from a General Fund appropriation, state aid assistance program, or receipts from a tax levy authorized by statute shall be expended in support of programs or activities which are in conflict with the role and mission assignments applicable to the University of Nebraska, state colleges, or community colleges under sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

**Source:** Laws 1978, LB 756, § 17; Laws 1979, LB 187, § 261; Laws 1996, LB 900, § 1081; Laws 2017, LB512, § 26.

**85-949 State college system; role and mission assignments; board of trustees; adopt policies.**

The role and mission assignments enumerated in sections 85-950 to 85-958 shall apply to the state college system and its institutions. Such assignments shall prohibit, limit, or restrict only those programs or services provided for under such sections. The Board of Trustees of the Nebraska State Colleges shall adopt and promulgate policies and procedures necessary to assure compliance with sections 85-194, 85-308, 85-606.01, 85-917 to 85-966, and 85-1511.

**Source:** Laws 1978, LB 756, § 33; Laws 1996, LB 900, § 1082; Laws 2017, LB512, § 27.

(j) FEDERAL EDUCATION LOAN

**85-9,140 Federal education loan; information provided to student; liability of eligible institution.**

(1) For purposes of this section, eligible institution means a publicly funded postsecondary educational institution located in Nebraska.

(2) Beginning with school year 2017-18, an eligible institution that receives federal education loan information for a student enrolled in the eligible institution shall provide the following to such student annually prior to the student accepting a federal education loan:

(a) An estimate of the total dollar amount of federal education loans taken out by the student at the time the information is provided;

(b) For the dollar amount of federal education loans that the student has taken out at the time the information is provided, an estimate of (i) the potential total payoff amount, including principal and interest, or a range within which the total payoff amount may fall, (ii) the monthly repayment amounts, including principal and interest, that a typical borrower may incur, and (iii) the number of years used in determining the potential total payoff amount, and information on how the student can access online repayment calculators. Such information may include a statement that the estimates and ranges are general in nature and not meant as a guarantee or promise of the actual amounts; and

(c) The percentage of the aggregate borrowing limit the student has reached at the time the information is provided.

(3) An eligible institution does not incur liability for any information provided pursuant to subsection (2) of this section.

**Source:** Laws 2016, LB726, § 1.

## ARTICLE 10

### NEBRASKA SAFETY CENTER

#### Section

85-1008. Nebraska Safety Center Advisory Council; membership; appointment.

#### **85-1008 Nebraska Safety Center Advisory Council; membership; appointment.**

(1) To assist the center in carrying out its purposes and functions, the Board of Regents may establish a Nebraska Safety Center Advisory Council composed of the following members:

- (a) One representative from the Department of Transportation;
- (b) One representative from the Department of Motor Vehicles;
- (c) One representative from the State Department of Education;
- (d) One representative from the Game and Parks Commission;
- (e) One representative from the Department of Labor;
- (f) One person representing the community college areas;
- (g) One person representing private business and industry;
- (h) One person representing the University of Nebraska;
- (i) One person representing the medical profession;
- (j) One person representing the area of law enforcement in this state;
- (k) One person representing the Safety Council of Nebraska, Inc.;
- (l) One person representing the area of transportation;
- (m) One person representative of emergency medical services;

- (n) One person representing the judiciary in the State of Nebraska;
- (o) One person representing city government;
- (p) One person representing county government;
- (q) One person representing the area of agriculture;
- (r) One person representing the local public school system;
- (s) One person representing fire safety;
- (t) One representative of the Coordinating Commission for Postsecondary Education;
- (u) One person representing the Red Cross; and
- (v) One person representing the state colleges.

(2) Representatives selected to serve on the council shall have appropriate education, training, and experience in the field of fire safety, industrial safety, recreational safety, domestic safety, or traffic safety.

**Source:** Laws 1978, LB 693, § 8; Laws 1991, LB 663, § 124; Laws 1994, LB 683, § 14; Laws 2009, LB299, § 1; Laws 2017, LB339, § 295.

**ARTICLE 14**

**COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION**

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

Section

- 85-1401. Act, how cited.
- 85-1412. Commission; additional powers and duties.
- 85-1414.01. Oral health care; practice of dentistry; legislative intent; Oral Health Training and Services Fund; created; use; investment; contracts authorized; duties.
- 85-1416. Budget and state aid requests; review; commission; duties.

(c) LEGISLATIVE PRIORITIES

- 85-1429. Commission; report on higher education priorities.

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

**85-1401 Act, how cited.**

Sections 85-1401 to 85-1420 shall be known and may be cited as the Coordinating Commission for Postsecondary Education Act.

**Source:** Laws 1991, LB 663, § 4; Laws 1999, LB 816, § 10; Laws 2015, LB661, § 38.

**85-1412 Commission; additional powers and duties.**

The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01. The recommendations submitted to the Legislature shall be submitted electronically;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state, and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer (a) the Access College Early Scholarship Program Act, (b) the Community College Aid Act, (c) the Nebraska Community College Student Performance and Occupational Education Grant Fund under the direction of the Nebraska Community College Student Performance and Occupational Education Grant Committee, (d) the Nebraska Opportunity Grant Act, (e) the Postsecondary Institution Act, and (f) the community college gap assistance program and the Community College Gap Assistance Program Fund;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

(9) On or before December 1 of each even-numbered year, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years. The report submitted to the Legislature shall be submitted electronically;

(10) Provide staff support for interstate compacts on postsecondary education; and



(11) Request inclusion of the commission in any existing grant review process and information system.

**Source:** Laws 1991, LB 663, § 15; Laws 1993, LB 93, § 7; Laws 1994, LB 683, § 18; Laws 1999, LB 816, § 14; Laws 2003, LB 7, § 5; Laws 2003, LB 574, § 26; Laws 2003, LB 685, § 29; Laws 2007, LB192, § 1; Laws 2009, LB340, § 1; Laws 2010, LB956, § 3; Laws 2011, LB637, § 29; Laws 2012, LB782, § 234; Laws 2012, LB946, § 13; Laws 2013, LB211, § 1; Laws 2015, LB519, § 26.

**Cross References**

**Access College Early Scholarship Program Act**, see section 85-2101.

**Community College Aid Act**, see section 85-2231.

**Integrated Postsecondary Education Data System**, see section 85-1424.

**Nebraska Opportunity Grant Act**, see section 85-1901.

**Postsecondary Institution Act**, see section 85-2401.

**85-1414.01 Oral health care; practice of dentistry; legislative intent; Oral Health Training and Services Fund; created; use; investment; contracts authorized; duties.**

(1) The Legislature finds that:

(a) The availability and accessibility of quality, affordable oral health care for all residents of the State of Nebraska is a matter of public concern and represents a compelling need affecting the general welfare of all residents;

(b) The development and sustainability of a skilled workforce in the practice of dentistry is a public health priority for the State of Nebraska; and

(c) According to research sponsored by the Office of Oral Health and Dentistry of the Department of Health and Human Services, the Nebraska Rural Health Advisory Commission, and the Health Professions Tracking Service of the College of Public Health of the University of Nebraska Medical Center:

(i) A majority of the ninety-three counties of the State of Nebraska are general dentistry shortage areas as designated by the Nebraska Rural Health Advisory Commission and more than twenty percent of the ninety-three counties have no dentist;

(ii) Eighty-two counties are shortage areas in pediatric dentistry as designated by the Nebraska Rural Health Advisory Commission;

(iii) The uneven distribution of dentists in the State of Nebraska is a public health concern and twenty-four percent of the dentists in Nebraska are estimated to be planning to retire by 2017;

(iv) Sixty percent of the children in the State of Nebraska experience dental disease by the time they are in the third grade; and

(v) It is estimated that more than twenty-five thousand children attending public schools in Omaha, Nebraska, do not have a means of continuing dental care.

(2) It is the intent of the Legislature to provide for the development of a skilled and diverse workforce in the practice of dentistry and oral health care in order to provide for the oral health of all residents of Nebraska, to assist in dispersing the workforce to address the disparities of the at-risk populations in the state, and to focus efforts in areas and demographic groups in which access to a skilled workforce in the practice of dentistry and oral health care is most needed. In order to accomplish these goals, the Legislature recognizes that it is

necessary to contract with professional dental education institutions committed to addressing the critical oral health care needs of the residents of Nebraska.

(3) The Oral Health Training and Services Fund is created. The Coordinating Commission for Postsecondary Education shall administer the fund to contract for reduced-fee and charitable oral health services, oral health workforce development, and oral health services using telehealth as defined in section 71-8503 for the residents of Nebraska. 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) To be eligible to enter into a contract under this section, an applicant shall be a corporation exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code and shall submit a plan to the commission as prescribed in subsection (5) of this section to provide oral health training, including assistance for the graduation of dental students at a Nebraska dental college, to provide discounted or charitable oral health services focusing on lower-income and at-risk populations within the state, and to target the unmet oral health care needs of residents of Nebraska. In addition, the applicant shall submit at least five letters of intent with school districts or federally qualified health centers 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, in at least five different counties throughout the state to provide discounted or charitable oral health services for a minimum of ten years. An application to enter into a contract under this section shall be made no later than January 1, 2017.

(5) The plan shall include (a) a proposal to provide oral health training at a reduced fee to students in dental education programs who agree to practice dentistry for at least five years after graduation in a dental health profession shortage area designated by the Nebraska Rural Health Advisory Commission pursuant to section 71-5665, (b) a proposal to provide discounted or charitable oral health services for a minimum of ten years to residents of Nebraska, and (c) a proposal to provide oral health services to residents of Nebraska using telehealth as defined in section 71-8503.

(6) Any party entering into a contract under this section shall agree that any funds disbursed pursuant to the contract shall only be used for services and equipment related to the proposals in the plan and shall not be used for any other program operated by the contracting party. If any of the funds disbursed pursuant to the contract are used for equipment, such funds shall only be used for patient-centered oral health care equipment, including, but not limited to, dental chairs for patients, lighting for examination and procedure rooms, and other equipment used for oral health services for patients and for training students in dental education programs, and shall not be used for travel, construction, or any other purpose not directly related to the proposals in the plan.

(7) The contract shall require matching funds from other sources in a four-to-one ratio with the funds to be disbursed under the contract. The party entering into the contract shall specify the source and amount of all matching funds. No applicant shall receive an award amount under a contract under this section of more than eight million dollars. If more than one applicant meets the requirements of this section to enter into a contract and provides evidence that private or other funds have been received by the applicant as matching funds for such

a contract in an amount greater than or equal to sixteen million dollars, each of such applicants shall receive an award amount under a contract equal to eight million dollars divided by the number of such applicants. If one of such applicants qualifies for a contract award amount of less than four million dollars, any other such applicant may receive a contract award amount up to eight million dollars minus the amount awarded to the applicant qualifying for less than four million dollars. The contract amount shall be awarded first to the applicant qualifying for the lowest contract award amount. The contract shall require full and detailed reporting of the expenditure of funds disbursed pursuant to the contract. Any party entering into a contract under this section shall report electronically to the Legislature within one hundred twenty days after the expenditure of the funds disbursed pursuant to the contract detailing the nature of the expenditures made as a result of the contract. In addition, any party entering into a contract under this section shall report electronically to the Legislature on an annual basis the charitable oral health services provided in school districts and federally qualified health centers and the number of recipients and the placements of students receiving oral health training at a reduced fee in dental education programs.

(8) The State Treasurer shall transfer the June 30, 2017, unobligated balance in the Oral Health Training and Services Fund to the Cash Reserve Fund on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 39; Laws 2017, LB331, § 56.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **85-1416 Budget and state aid requests; review; commission; duties.**

(1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review and modify, if needed to promote compliance and consistency with the comprehensive state-wide plan and prevent unnecessary duplication, the budget requests of the governing boards.

(2)(a) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to subdivision (1) of section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission an outline of its proposed operating budget. The outline of its proposed operating budget or outline of proposed state aid request shall include those information summaries provided to the institution's governing board describing the respective institution's budget for the next fiscal year or biennium. The outline shall contain projections of funds necessary for (i) the retention of current programs and services at current funding levels, (ii) any inflationary costs necessary to maintain current programs and services at the current programmatic or service levels, and (iii) proposed new and expanded programs and services. In addition to the outline, the commission may request an institution to provide to the commission any other supporting information to

assist the commission in its budget review process. An institution may comply with such requests pursuant to section 85-1417.

(b) On September 15 of each biennial budget request year, the boards of governors of the community colleges or their designated representatives shall submit to the commission outlines of their proposed state aid requests.

(c) The commission shall analyze institutional budget priorities in light of the comprehensive statewide plan, role and mission assignments, and the goal of prevention of unnecessary duplication. The commission shall submit to the Governor and Legislature by October 15 of each year recommendations for approval or modification of the budget requests together with a rationale for its recommendations. The recommendations submitted to the Legislature shall be submitted electronically. The analysis and recommendations by the commission shall focus on budget requests for new and expanded programs and services and major statewide funding issues or initiatives as identified in the comprehensive statewide plan. If an institution does not comply with the commission's request pursuant to subdivision (a) of this subsection for additional budget information, the commission may so note the refusal and its specific information request in its report of budget recommendations. The commission shall also provide to the Governor and the Appropriations Committee of the Legislature on or before October 1 of each even-numbered year a report identifying public policy issues relating to student tuition and fees, including the appropriate relative differentials of tuition and fee levels between the sectors of public postsecondary education in the state consistent with the comprehensive statewide plan. The report submitted to the committee shall be submitted electronically.

(3) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to subdivision (1) of section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission information the commission deems necessary regarding each board's capital construction budget requests. The commission shall review the capital construction budget request information and may recommend to the Governor and the Legislature modification, approval, or disapproval of such requests consistent with the statewide facilities plan and any project approval determined pursuant to subsection (10) of section 85-1414. The recommendations submitted to the Legislature shall be submitted electronically. The commission shall develop from a statewide perspective a unified prioritization of individual capital construction budget requests for which it has recommended approval and submit such prioritization to the Governor and the Legislature for their consideration. The prioritization submitted to the Legislature shall be submitted electronically. In establishing its prioritized list, the commission may consider and respond to the priority order established by the Board of Regents or the Board of Trustees in their respective capital construction budget requests.

(4) Nothing in this section shall be construed to affect other constitutional, statutory, or administrative requirements for the submission of budget or state aid requests by the governing boards to the Governor and the Legislature.

**Source:** Laws 1991, LB 663, § 19; Laws 1993, LB 239, § 21; Laws 1994, LB 683, § 22; Laws 1999, LB 816, § 17; Laws 2002, Second

Spec. Sess., LB 12, § 5; Laws 2006, LB 962, § 5; Laws 2007, LB342, § 38; Laws 2010, LB1072, § 4; Laws 2012, LB782, § 238; Laws 2014, LB546, § 5; Laws 2016, LB1092, § 12.

(c) LEGISLATIVE PRIORITIES

**85-1429 Commission; report on higher education priorities.**

On or before March 15 of each year, the Coordinating Commission for Postsecondary Education shall provide electronically to the Legislature a report that evaluates progress toward attainment of the priorities listed in subdivision (3) of section 85-1428.

**Source:** Laws 2006, LB 962, § 8; Laws 2012, LB782, § 239; Laws 2015, LB99, § 1.

**ARTICLE 15**

**COMMUNITY COLLEGES**

Section  
85-1503. Terms, defined.

**85-1503 Terms, defined.**

For purposes of sections 85-1501 to 85-1540, unless the context otherwise requires:

(1) Community college means an educational institution operating and offering programs pursuant to such sections;

(2) Community college area means an area established by section 85-1504;

(3) Board means the Community College Board of Governors for each community college area;

(4) Full-time equivalent student means, in the aggregate, the equivalent of a registered student who in a twelve-month period is enrolled in (a) thirty semester credit hours or forty-five quarter credit hours of classroom, laboratory, clinical, practicum, or independent study course work or cooperative work experience or (b) nine hundred contact hours of classroom or laboratory course work for which credit hours are not offered or awarded. Avocational and recreational community service programs or courses are not included in determining full-time equivalent students or student enrollment. The number of credit and contact hours to be counted by any community college area in which a tribally controlled community college is located shall include credit and contact hours awarded by such tribally controlled community college to students for which such institution received no federal reimbursement pursuant to the federal Tribally Controlled College or University Assistance Act of 1978, 25 U.S.C. 1801;

(5) Contact hour means an educational activity consisting of sixty minutes minus break time and required time to change classes;

(6) Credit hour means the unit used to ascertain the educational value of course work offered by the institution to students enrolling for such course work, earned by such students upon successful completion of such course work, and for which tuition is charged. A credit hour may be offered and earned in any of several instructional delivery systems, including, but not limited to, classroom hours, laboratory hours, clinical hours, practicum hours, cooperative

work experience, and independent study. A credit hour shall consist of a minimum of: (a) Ten quarter or fifteen semester classroom contact hours per term of enrollment; (b) twenty quarter or thirty semester academic transfer and academic support laboratory hours per term of enrollment; (c) thirty quarter or forty-five semester vocational laboratory hours per term of enrollment; (d) thirty quarter or forty-five semester clinical or practicum contact hours per term of enrollment; or (e) forty quarter or sixty semester cooperative work experience contact hours per term of enrollment. An institution may include in a credit hour more classroom, laboratory, clinical, practicum, or cooperative work experience hours than the minimum required in this subdivision. The institution shall publish in its catalog, or otherwise make known to the student in writing prior to the student enrolling or paying tuition for any courses, the number of credit or contact hours offered in each such course. Such published credit or contact hour offerings shall be used to determine whether a student is a full-time equivalent student pursuant to subdivision (4) of this section;

(7) Classroom hour means a minimum of fifty minutes of formalized instruction on campus or off campus in which a qualified instructor applying any combination of instructional methods such as lecture, directed discussion, demonstration, or the presentation of audiovisual materials is responsible for providing an educational experience to students;

(8) Laboratory hour means a minimum of fifty minutes of educational activity on campus or off campus in which students conduct experiments, perfect skills, or practice procedures under the direction of a qualified instructor;

(9) Clinical hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experience under constant supervision at a health-related agency, receives individual instruction in the performance of a particular function, and is observed and critiqued in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of students and for the delivery of part of the didactic phase of the experience;

(10) Practicum hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experiences, receives individual instruction in the performance of a particular function, and is observed and critiqued by an instructor in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of the students;

(11) Cooperative work experience means an internship or on-the-job training, designed to provide specialized skills and educational experiences, which is coordinated, supervised, observed, and evaluated by qualified college staff or faculty and may be completed on campus or off campus, depending on the nature of the arrangement;

(12) Independent study means an arrangement between an instructor and a student in which the instructor is responsible for assigning work activity or skill objectives to the student, personally providing needed instruction, assessing the student's progress, and assigning a final grade. Credit hours shall be assigned according to the practice of assigning credits in similar courses;

(13) Full-time equivalent student enrollment total means the total of full-time equivalent students enrolled in a community college in any fiscal year;

(14) General academic transfer course means a course offering in a one-year or two-year degree-credit program, at the associate degree level or below, intended by the offering institution for transfer into a baccalaureate program. The completion of the specified courses in a general academic transfer program may include the award of a formal degree;

(15) Applied technology or occupational course means a course offering in an instructional program, at the associate degree level or below, intended to prepare individuals for immediate entry into a specific occupation or career. The primary intent of the institutions offering an applied technology or occupational program shall be that such program is for immediate job entry. The completion of the specified courses in an applied technology or occupational program may include the award of a formal degree, diploma, or certificate;

(16) Academic support course means a general education academic course offering which may be necessary to support an applied technology or occupational program;

(17) Class 1 course means an applied technology or occupational course offering which requires the use of equipment, facilities, or instructional methods easily adaptable for use in a general academic transfer program classroom or laboratory;

(18) Class 2 course means an applied technology or occupational course offering which requires the use of specialized equipment, facilities, or instructional methods not easily adaptable for use in a general academic transfer program classroom or laboratory;

(19) Reimbursable educational unit means a full-time equivalent student multiplied by (a) for a general academic transfer course or an academic support course, a factor of one, (b) for a Class 1 course, a factor of one and fifty-hundredths, (c) for a Class 2 course, a factor of two, (d) for a tribally controlled community college general academic transfer course or academic support course, a factor of two, (e) for a tribally controlled community college Class 1 course, a factor of three, and (f) for a tribally controlled community college Class 2 course, a factor of four;

(20) Reimbursable educational unit total means the total of all reimbursable educational units accumulated in a community college area in any fiscal year;

(21) Special instructional term means any term which is less than fifteen weeks for community colleges using semesters or ten weeks for community colleges using quarters;

(22) Statewide reimbursable full-time equivalent total means the total of all reimbursable full-time equivalents accumulated statewide for the community college in any fiscal year;

(23) Tribally controlled community college means an educational institution operating and offering programs pursuant to the federal Tribally Controlled College or University Assistance Act of 1978, 25 U.S.C. 1801; and

(24) Tribally controlled community college state aid amount means:

(a) For fiscal years 2010-11, 2011-12, and 2012-13, the amount of state aid provided to a tribally controlled community college pursuant to section 90-517; and

(b) For fiscal year 2013-14 and each fiscal year thereafter, the quotient of the amount of state aid to be distributed pursuant to subdivisions (1) and (3) of section 85-2234 for such fiscal year to a community college area in which a

tribally controlled community college is located divided by the reimbursable educational unit total for such community college area for the fiscal year immediately preceding the fiscal year for which aid is being calculated, with such quotient then multiplied by the reimbursable educational units derived from credit and contact hours awarded by a tribally controlled community college to students for which such institution received no federal reimbursement pursuant to the federal Tribally Controlled College or University Assistance Act of 1978, 25 U.S.C. 1801, for the fiscal year immediately preceding the fiscal year for which aid is being calculated.

**Source:** Laws 1975, LB 344, § 2; Laws 1977, LB 459, § 10; Laws 1979, LB 363, § 1; Laws 1984, LB 890, § 1; Laws 1987, LB 329, § 1; Laws 1988, LB 802, § 30; Laws 1991, LB 663, § 45; Laws 1992, LB 921, § 1; R.S.Supp.,1992, § 79-2637; Laws 1993, LB 239, § 25; Laws 1995, LB 241, § 1; Laws 1997, LB 269, § 68; Laws 1999, LB 67, § 1; Laws 2005, LB 38, § 3; Laws 2007, LB342, § 40; Laws 2010, LB1072, § 7; Laws 2011, LB59, § 5; Laws 2012, LB946, § 16; Laws 2015, LB100, § 1.

## ARTICLE 19

### NEBRASKA OPPORTUNITY GRANT ACT

#### Section

85-1920. Nebraska Opportunity Grant Fund; created; use; investment.

#### **85-1920 Nebraska Opportunity Grant Fund; created; use; investment.**

The Nebraska Opportunity Grant Fund is created. Money in the fund shall include amounts transferred from the State Lottery Operation Trust Fund pursuant to section 9-812 until June 30, 2016, or the Nebraska Education Improvement Fund pursuant to section 9-812 until June 30, 2021. All amounts accruing to the Nebraska Opportunity Grant Fund shall be used to carry out the Nebraska Opportunity Grant 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.

The Nebraska Opportunity Grant Fund terminates on June 30, 2021. Any money in the fund on such date shall be transferred to the Nebraska Education Improvement Fund on such date.

**Source:** Laws 2003, LB 574, § 20; Laws 2010, LB956, § 18; Laws 2013, LB497, § 6; Laws 2015, LB519, § 38.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 20

### COMMUNITY COLLEGE GAP ASSISTANCE PROGRAM ACT

#### Section

85-2001. Act, how cited.

85-2002. Terms, defined.

85-2003. Community college gap assistance program; created; purpose; eligibility.

85-2004. Community college gap assistance; application.

85-2005. Community college gap assistance; criteria; denial of application; when.



## Section

- 85-2006. Community college gap assistance; eligible costs.
- 85-2007. Applicant; initial assessment.
- 85-2008. Community college gap assistance; recipient; duties; termination of assistance; when.
- 85-2009. Community College Gap Assistance Program Fund; created; use; investment.
- 85-2010. Community college gap assistance program; committee; duties; meetings.
- 85-2011. Rules and regulations.

**85-2001 Act, how cited.**

Sections 85-2001 to 85-2011 shall be known and may be cited as the Community College Gap Assistance Program Act.

**Source:** Laws 2015, LB519, § 27.

**85-2002 Terms, defined.**

For purposes of the Community College Gap Assistance Program Act:

(1) Committee means the Nebraska Community College Student Performance and Occupational Education Grant Committee;

(2) Community college gap assistance program means the program created pursuant to section 85-2003;

(3) Eligible program means a program offered by a community college that is not offered for credit but is aligned with training programs with stackable credentials that lead to a program awarding college credit, an associate's degree, a diploma, or a certificate in an in-demand occupation, has a duration of not less than sixteen contact hours in length, and does any of the following:

- (a) Offers a state, national, or locally recognized certificate;
- (b) Offers preparation for a professional examination or licensure;
- (c) Provides endorsement for an existing credential or license;
- (d) Represents recognized skill standards defined by an industrial sector; or
- (e) Offers a similar credential or training; and

(4) In-demand occupation means:

- (a) Financial services;
- (b) Transportation, warehousing, and distribution logistics;
- (c) Precision metals manufacturing;
- (d) Biosciences;
- (e) Renewable energy;
- (f) Agriculture and food processing;
- (g) Business management and administrative services;
- (h) Software and computer services;
- (i) Research, development, and engineering services;
- (j) Health services;
- (k) Hospitality and tourism; and

(l) Any other industry designated as an in-demand occupation by the committee.

**Source:** Laws 2015, LB519, § 28.

**85-2003 Community college gap assistance program; created; purpose; eligibility.**

(1) The community college gap assistance program is created. The program shall be under the direction of the committee and shall be administered by the Coordinating Commission for Postsecondary Education. The purpose of the community college gap assistance program is to provide funding to community colleges to award community college gap assistance to students in eligible programs.

(2) To be eligible for community college gap assistance under the community college gap assistance program, an applicant:

(a) Shall have a family income which is at or below two hundred fifty percent of Office of Management and Budget income poverty guidelines; and

(b) Shall be a resident of Nebraska as provided in section 85-502.

(3) Eligibility for such tuition assistance shall not be construed to guarantee enrollment in any eligible program.

**Source:** Laws 2015, LB519, § 29.

**85-2004 Community college gap assistance; application.**

Application for community college gap assistance under the community college gap assistance program shall be made to the community college in which the applicant is enrolled or intends to enroll. An application shall be valid for six months from the date of signature on the application. The applicant shall provide documentation of all sources of income. An applicant shall not receive community college gap assistance for more than one eligible program.

**Source:** Laws 2015, LB519, § 30.

**85-2005 Community college gap assistance; criteria; denial of application; when.**

(1) An applicant for community college gap assistance under the community college gap assistance program shall demonstrate capacity to achieve the following outcomes:

(a) The ability to be accepted to and complete an eligible program;

(b) The ability to be accepted into and complete a postsecondary certificate, diploma, or degree program for credit;

(c) The ability to obtain full-time employment; and

(d) The ability to maintain full-time employment over time.

(2) The committee may grant community college gap assistance under the community college gap assistance program to an applicant in any amount up to the full amount of eligible costs.

(3) The committee shall deny an application when the community college receiving the application determines that funding for an applicant's participation in an eligible program is available from any other public or private funding source.

**Source:** Laws 2015, LB519, § 31.

**85-2006 Community college gap assistance; eligible costs.**

The eligible costs for which the committee may award community college gap assistance under the community college gap assistance program include, but are not limited to:

- (1) Tuition;
- (2) Direct training costs;
- (3) Required books and equipment; and
- (4) Fees, including, but not limited to, fees for industry testing services and background check services.

**Source:** Laws 2015, LB519, § 32.

**85-2007 Applicant; initial assessment.**

An applicant for community college gap assistance under the community college gap assistance program shall complete an initial assessment administered by the community college receiving the application to determine the applicant's readiness to complete an eligible program. The initial assessment shall include any assessments required by the eligible program.

**Source:** Laws 2015, LB519, § 33.

**85-2008 Community college gap assistance; recipient; duties; termination of assistance; when.**

(1) A recipient of community college gap assistance under the community college gap assistance program shall:

(a) Maintain regular contact with faculty of the eligible program to document the applicant's progress in the program;

(b) Sign any necessary releases to provide relevant information to community college faculty or case managers, if applicable;

(c) Discuss with faculty of the eligible program any issues that may affect the recipient's ability to complete the eligible program and obtain and maintain employment;

(d) Attend all required courses regularly; and

(e) Meet with faculty of the eligible program to develop a job-search plan.

(2) A community college may terminate community college gap assistance under the community college gap assistance program for a recipient who fails to meet the requirements of this section.

**Source:** Laws 2015, LB519, § 34.

**85-2009 Community College Gap Assistance Program Fund; created; use; investment.**

(1) The Community College Gap Assistance Program Fund is created. The fund shall be under the direction of the committee and shall be administered by the Coordinating Commission for Postsecondary Education. The fund shall consist of money received pursuant to section 9-812, any other money received by the state in the form of grants or gifts from nonfederal sources, such other amounts as may be transferred or otherwise accrue to the fund, and any investment income earned on the fund. The fund shall be used to provide aid or grants to the community colleges pursuant to the Community College Gap Assistance Program 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.

(2) The total of community college gap assistance awarded from the Community College Gap Assistance Program Fund during any fiscal year shall not exceed one million five hundred thousand dollars.

(3) Money in the fund may also be used by the committee:

(a) To establish application and funding procedures; and

(b) To assist community colleges in defraying the costs of direct staff support services, including, but not limited to, marketing, outreach, applications, interviews, and assessments as follows: (i) Up to twenty percent of any amount allocated for such purposes to the two smallest community colleges; (ii) up to ten percent of any such amount to the two largest community colleges; and (iii) up to fifteen percent of any such amount to the remaining two community colleges. For purposes of this subsection, community college size shall be determined based on the most recent three-year rolling average full-time equivalent enrollment.

**Source:** Laws 2015, LB519, § 35.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **85-2010 Community college gap assistance program; committee; duties; meetings.**

(1) The committee shall develop a common applicant tracking system for the community college gap assistance program that shall be implemented consistently by each participating community college.

(2) The committee shall coordinate statewide oversight, evaluation, and reporting efforts for the community college gap assistance program.

(3) The committee shall meet at least quarterly to evaluate and monitor the performance of the community college gap assistance program to determine if performance measures are being met and shall take necessary steps to correct any deficiencies. Performance measures include, but are not limited to, eligible program completion rates, job attainment rates, and continuing education rates.

**Source:** Laws 2015, LB519, § 36.

### **85-2011 Rules and regulations.**

The Coordinating Commission for Postsecondary Education may adopt and promulgate rules and regulations to carry out the Community College Gap Assistance Program Act.

**Source:** Laws 2015, LB519, § 37.

## **ARTICLE 21**

### **ACCESS COLLEGE EARLY SCHOLARSHIP PROGRAM ACT**

Section

85-2102. Terms, defined.

85-2104. Student; eligibility; applications; prioritized.

**85-2102 Terms, defined.**

For purposes of the Access College Early Scholarship Program Act:

(1) Career program of study means a sequence of at least three high school courses that (a) may include dual-credit or college credit courses, (b) are part of a career pathway program of study aligned with (i) the rules and regulations of the State Department of Education adopted and promulgated pursuant to section 79-777, (ii) a professional certification requirement, or (iii) the requirements for a postsecondary certification or diploma, and (c) have at least one local member of business or industry partnering as an official advisor to the program;

(2) Commission means the Coordinating Commission for Postsecondary Education;

(3) Extreme hardship means any event, including fire, illness, accident, or job loss, that has recently resulted in a significant financial difficulty for a student or the student's parent or legal guardian;

(4) Postsecondary educational institution means a two-year or four-year college or university which is a member institution of an accrediting body recognized by the United States Department of Education;

(5) Qualified postsecondary educational institution means a postsecondary educational institution located in Nebraska which has agreed, on a form developed and provided by the commission, to comply with the requirements of the act; and

(6) Student means a student attending a Nebraska high school with a reasonable expectation that such student will meet the residency requirements of section 85-502 upon graduation from a Nebraska high school.

**Source:** Laws 2007, LB192, § 3; Laws 2015, LB525, § 33.

**85-2104 Student; eligibility; applications; prioritized.**

Applications for the Access College Early Scholarship Program shall be prioritized for students qualifying pursuant to subdivision (1) or (2) of this section, and applications for students qualifying only pursuant to subdivision (3) of this section shall only be considered if funds are available after fulfilling the applications for students qualifying pursuant to subdivision (1) or (2) of this section. Priority dates shall be determined by the commission on a term basis. A student who is applying to take one or more courses for credit from a qualified postsecondary educational institution is eligible for the Access College Early Scholarship Program if:

(1) Such student or the student's parent or legal guardian is eligible to receive:

(a) Supplemental Security Income;

(b) Supplemental Nutrition Assistance Program benefits;

(c) Free or reduced-price lunches under United States Department of Agriculture child nutrition programs;

(d) Aid to families with dependent children; or

(e) Assistance under the Special Supplemental Nutrition Program for Women, Infants, and Children;

(2) The student or the student's parent or legal guardian has experienced an extreme hardship; or

(3) Such student is requesting assistance pursuant to the program to cover the cost of tuition and fees for a course that is part of a career plan of study, up to two hundred fifty dollars per term, and the student's family has an annual household income at or below two hundred percent of the federal poverty level.

**Source:** Laws 2007, LB192, § 5; Laws 2009, LB288, § 45; Laws 2015, LB525, § 34.

## ARTICLE 22 COMMUNITY COLLEGE AID ACT

Section  
85-2234. Allocation of aid.

### **85-2234 Allocation of aid.**

Aid appropriated pursuant to the Community College Aid Act for fiscal year 2013-14 and each fiscal year thereafter shall be allocated among community college areas and tribally controlled community colleges as follows:

(1) The initial \$87,870,147 appropriated pursuant to the act shall be allocated to community college areas based on the proportionate share of aid received by each community college area for fiscal year 2012-13. If the amount appropriated for such fiscal year exceeds \$87,870,147, the excess amount shall be allocated as provided in subdivisions (2) and (3) of this section. If the amount appropriated for such fiscal year is less than or equal to \$87,870,147, the amount appropriated shall be allocated to community college areas based on the proportionate share of aid received by each community college area for fiscal year 2012-13;

(2) Of any amount remaining after the allocation of aid pursuant to subdivision (1) of this section, the next amount, up to but not to exceed \$500,000, shall be allocated as state aid pursuant to section 85-1539; and

(3) Any amount remaining after the allocations provided for in subdivisions (1) and (2) of this section shall be allocated among the community college areas on the following basis:

(a) Twenty-five percent of such amount shall be divided equally based on the number of community college areas designated pursuant to section 85-1504;

(b) Forty-five percent of such amount shall be divided based on each community college area's proportionate share of three-year average full-time equivalent student enrollment. A community college area's proportionate share of three-year average full-time equivalent student enrollment shall equal the sum of a community college area's full-time equivalent student enrollment total for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three, with such quotient divided by the quotient resulting from the sum of the full-time equivalent student enrollment total of all community college areas for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three;

(c) Thirty percent of such amount shall be divided based on each community college area's proportionate share of three-year average reimbursable educational units. A community college area's proportionate share of three-year average reimbursable educational units shall equal the sum of a community

college area's reimbursable educational unit total for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three, with such quotient divided by the quotient resulting from the sum of the reimbursable educational unit total of all community college areas for the three fiscal years immediately preceding the fiscal year for which aid is being calculated divided by three; and

(d) Tribally controlled community college state aid amounts shall be allocated pursuant to subdivision (24)(b) of section 85-1503 and subdivision (16) of section 85-1511.

**Source:** Laws 2012, LB946, § 4; Laws 2013, LB211, § 7; Laws 2015, LB100, § 2.

## ARTICLE 24

### POSTSECONDARY INSTITUTION ACT

#### Section

- 85-2401. Act, how cited.
- 85-2403. Terms, defined.
- 85-2405. Commission; powers and duties.
- 85-2422. Guaranty Recovery Cash Fund; established; use; investment.
- 85-2423. Commission; assess for-profit postsecondary institution; failure to comply; effect.
- 85-2424. Bond or other security agreement.
- 85-2425. Release of bond or other security agreement.
- 85-2426. Guaranty Recovery Cash Fund; use; claim.
- 85-2427. Reference to Guaranty Recovery Cash Fund authorized.
- 85-2428. Commission; report; contents.

#### **85-2401 Act, how cited.**

Sections 85-2401 to 85-2428 shall be known and may be cited as the Postsecondary Institution Act.

**Source:** Laws 2011, LB637, § 1; Laws 2017, LB512, § 28.

#### **85-2403 Terms, defined.**

For purposes of the Postsecondary Institution Act:

(1) Authorization to operate means either an authorization to operate on a continuing basis or a recurrent authorization to operate;

(2) Authorization to operate on a continuing basis means approval by the commission to operate a postsecondary institution in this state without a renewal requirement and once such authorization has been issued it continues indefinitely unless otherwise suspended, revoked, or terminated, including such authorizations previously deemed to be effective as of May 5, 2011, pursuant to the Postsecondary Institution Act for private and out-of-state public postsecondary institutions that had been continuously offering four-year undergraduate programs with a physical presence in the state for at least twenty academic years and for Nebraska public postsecondary institutions;

(3) Branch facility means a facility in Nebraska (a) which is separate from a principal facility, (b) which offers a full program and full student services, (c) which is under the supervision of an onsite director or administrator, and (d)(i) the ownership, management, and control of which are the same as the principal facility, which principal facility is responsible for the delivery of all services,

or (ii) at which education is offered by a franchisee of a franchisor authorized to operate as a postsecondary institution by the act;

(4) Commission means the Coordinating Commission for Postsecondary Education;

(5) Executive director means the executive director of the commission or his or her designee;

(6) For-profit postsecondary institution means any private postsecondary institution that is not exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01;

(7) Nebraska public postsecondary institution means any public postsecondary institution established, operated, and governed by this state or any of its political subdivisions;

(8) Out-of-state public postsecondary institution means any public postsecondary institution established, operated, and governed by another state or any of its political subdivisions;

(9)(a) Physical presence means:

(i) Offering a course for college credit or a degree program in this state that leads to an associate, baccalaureate, graduate, or professional degree, including:

(A) Establishing a physical location in this state where a student may receive synchronous or asynchronous instruction; or

(B) Offering a course or program that requires students to physically meet in one location for instructional purposes more than once during the course term; or

(ii) Establishing an administrative office in this state, including:

(A) Maintaining an administrative office in this state for purposes of enrolling students, providing information to students about the institution, or providing student support services;

(B) Providing office space to staff, whether instructional or noninstructional staff; or

(C) Establishing a mailing address in this state.

(b) Physical presence does not include:

(i) Course offerings in the nature of a short course or seminar if instruction for the short course or seminar takes no more than twenty classroom hours and the institution offers no more than two courses as defined by the commission in a calendar year;

(ii) Course offerings on a military installation solely for military personnel or civilians employed on such installation;

(iii) An educational experience arranged for an individual student, such as a clinical, practicum, residency, or internship; or

(iv) Courses offered online or through the United States mail or similar delivery service which do not require the physical meeting of a student with instructional staff;

(10) Postsecondary institution means any institution with a physical presence in Nebraska that provides postsecondary education and is exempt from the Private Postsecondary Career School Act;



(11) Principal facility means the primary physical presence in Nebraska of a postsecondary institution;

(12) Private postsecondary institution means any Nebraska or out-of-state nonpublic postsecondary institution including any for-profit postsecondary institution or nonprofit postsecondary institution; and

(13) Recurrent authorization to operate means approval by the commission to operate a postsecondary institution in this state until a renewal of such authorization is required.

**Source:** Laws 2011, LB637, § 3; Laws 2012, LB1104, § 13; Laws 2013, LB331, § 3; Laws 2017, LB512, § 29.

#### Cross References

Private Postsecondary Career School Act, see section 85-1601.

### **85-2405 Commission; powers and duties.**

The commission has the following powers and duties:

(1) To establish levels for recurrent authorizations to operate based on institutional offerings;

(2) To receive, investigate as it may deem necessary, and act upon applications for a recurrent authorization to operate and applications to renew a recurrent authorization to operate;

(3) To establish reporting requirements by campus location either through the federal Integrated Postsecondary Education Data System, 20 U.S.C. 1094(a)(17), as such section existed on January 1, 2011, and 34 C.F.R. 668.14(b)(19), as such regulation existed on January 1, 2011, or directly to the commission for any postsecondary institution which has an authorization to operate;

(4) To maintain a list of postsecondary institutions which have authorization to operate, which list shall be made available to the public;

(5) After consultation with the State Department of Education regarding the potential impact of such agreement and any modifications thereto on Nebraska students who may participate in distance education offered by out-of-state private postsecondary career schools, to enter into interstate reciprocity agreements for the provision of postsecondary distance education across state boundaries;

(6) To administer interstate reciprocity agreements entered into pursuant to subdivision (5) of this section and to approve or disapprove, consistent with such agreements, participation in such agreements by postsecondary institutions that have their principal place of business in Nebraska and that choose to participate in such agreements;

(7) To establish a notification process when a postsecondary institution which has an authorization to operate changes its address or adds instructional sites within this state;

(8) To conduct site visits of postsecondary institutions to carry out the Postsecondary Institution Act;

(9) To establish fees for applications for a recurrent authorization to operate, applications to renew or modify a recurrent authorization to operate, and applications to participate or continue participation in an interstate postsecond-

ary distance education reciprocity agreement, which fees shall be not more than the cost of reviewing and evaluating the applications;

(10) To receive, evaluate, approve, and pay claims pursuant to section 85-2426, assess for-profit postsecondary institutions pursuant to section 85-2423, and administer the Guaranty Recovery Cash Fund;

(11) To investigate any violations of the act by a postsecondary institution; and

(12) To adopt and promulgate rules, regulations, and procedures to administer the act and the Guaranty Recovery Cash Fund.

**Source:** Laws 2011, LB637, § 5; Laws 2012, LB1104, § 14; Laws 2013, LB331, § 4; Laws 2014, LB967, § 27; Laws 2017, LB512, § 30.

**85-2422 Guaranty Recovery Cash Fund; established; use; investment.**

The Guaranty Recovery Cash Fund is hereby established. The fund shall receive assessments imposed by the commission pursuant to section 85-2423 and shall be used by the commission to pay claims authorized pursuant to section 85-2426. 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. Any interest earned on the money in the fund shall accrue to the fund.

**Source:** Laws 2017, LB512, § 31.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

**85-2423 Commission; assess for-profit postsecondary institution; failure to comply; effect.**

(1) The commission shall annually assess each for-profit postsecondary institution one-tenth of one percent of the prior school year's gross tuition revenue until the Guaranty Recovery Cash Fund reaches the minimum fund level. The fund shall be maintained at a minimum fund level of two hundred fifty thousand dollars and a maximum fund level of five hundred thousand dollars. At any time when the fund drops below the minimum fund level, the commission may resume the assessment. Funds in excess of the maximum fund level shall be used as directed by the commission to provide grants or scholarships for students attending for-profit postsecondary institutions in Nebraska.

(2) The commission shall require documentation from each for-profit postsecondary institution to verify the tuition revenue collected by the institution and to determine the amount of the assessment under this section.

(3) Any for-profit postsecondary institution applying for an initial recurrent authorization to operate shall not be assessed under this section for the first year of operation but shall be assessed each year thereafter for four years or until the fund reaches the minimum fund level, whichever occurs last, and shall maintain the surety bond or other security required by section 85-2424.

(4) If a for-profit postsecondary institution fails to comply with this section, its authorization to operate shall be subject to revocation.

(5) The commission shall remit all funds collected pursuant to this section to the State Treasurer for credit to the Guaranty Recovery Cash Fund.

**Source:** Laws 2017, LB512, § 32.

**85-2424 Bond or other security agreement.**

Until the Guaranty Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-2423, when an application is made for an initial recurrent authorization to operate, the commission may require any for-profit postsecondary institution making such application to file with the commission a good and sufficient surety bond or other security agreement in a penal amount deemed satisfactory by the commission. Such bond or other security shall cover both principal and branch facilities. The bond or agreement shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in the state. The bond or agreement shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage by the termination of operations by the for-profit postsecondary institution. The surety shall pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond or agreement is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond or agreement. The bond or agreement may be continuous.

**Source:** Laws 2017, LB512, § 33.

**85-2425 Release of bond or other security agreement.**

(1) Until the Guaranty Recovery Cash Fund initially reaches the minimum fund level prescribed in section 85-2423, the bond or other security agreement of an institution provided for in section 85-2424 shall cover the period of the recurrent authorization to operate except when a surety is released as provided in this section.

(2) A bond or other security agreement filed under section 85-2424 may be released after such surety serves written notice on the commission thirty days prior to the release. Such release shall not discharge or otherwise affect any claim previously or subsequently filed by a student or enrollee or his or her parent or guardian provided for in section 85-2426 for the termination of operations by the for-profit postsecondary institution during the term for which tuition has been paid while the bond or agreement was in force.

(3) During the term of the bond or agreement and upon forfeiture of the bond or agreement, the commission retains a property interest in the surety's guarantee of payment under the bond or agreement which is not affected by the bankruptcy, insolvency, or other financial incapacity of the operator or principal on the bond or agreement.

**Source:** Laws 2017, LB512, § 34.

**85-2426 Guaranty Recovery Cash Fund; use; claim.**

(1) The money in the Guaranty Recovery Cash Fund shall be used in the following order of priority:

(a) To reimburse any student injured by the termination of operations by a for-profit postsecondary institution on or after September 1, 2017, for the cost

of tuition and fees. A student injured by the termination of operations by a for-profit postsecondary institution means (i) a student who has paid tuition and fees to the institution for which classes were offered but not finished due to termination of operations, (ii) a student who has paid tuition and fees to the institution for which classes were not offered and no refunds were made, and (iii) a student who ceased to be enrolled in classes at an institution while the institution was in operation and to whom a refund of unearned tuition and fees became due from the institution after the institution terminated operations and no refunds were made within the institution's required time period following the student's withdrawal from the institution;

(b) To reimburse any former student of a for-profit postsecondary institution that has terminated operations on or after September 1, 2017, for the cost of obtaining such student's student records;

(c) To reimburse the University of Nebraska for reasonable expenses directly associated with the storage and maintenance of academic records pursuant to sections 85-173 and 85-174 of those students adversely affected by termination of operations by a for-profit postsecondary institution; and

(d) To reimburse the Nebraska Opportunity Grant Fund for any funds distributed to a for-profit postsecondary institution for an academic term that was not completed by students receiving awards under the Nebraska Opportunity Grant Act due to the termination of operations by a for-profit postsecondary institution after September 1, 2017, to the extent such funds are not returned to the Nebraska Opportunity Grant Fund by the for-profit postsecondary institution.

(2) No claim shall be allowed unless the claim is submitted within one year after the termination of operations by the for-profit postsecondary institution and there are sufficient funds available in the Guaranty Recovery Cash Fund to pay the claim.

**Source:** Laws 2017, LB512, § 35.

#### Cross References

Nebraska Opportunity Grant Act, see section 85-1901.

### **85-2427 Reference to Guaranty Recovery Cash Fund authorized.**

A for-profit postsecondary institution may include references to the Guaranty Recovery Cash Fund in advertising or information provided to students or prospective students. Any such reference shall clearly describe the protection and limitations prescribed in section 85-2426 and the relevant rules and regulations adopted and promulgated by the commission.

**Source:** Laws 2017, LB512, § 36.

### **85-2428 Commission; report; contents.**

On or before November 1 of each year, the commission shall submit electronically a report to the Governor and the Legislature containing:

- (1) The number of claims made against the Guaranty Recovery Cash Fund;
- (2) The institutions against which the claims are made;
- (3) The number of claims that are approved and the associated payouts from the funds;
- (4) The number of claims that are denied; and

(5) The amount of money in the Guaranty Recovery Cash Fund used to reimburse the Nebraska Opportunity Grant Fund.

**Source:** Laws 2017, LB512, § 37.

## ARTICLE 25 SOCIAL WORK STUDENTS

### Section

85-2501. Department of Health and Human Services; establish program to provide stipends; funding; application process.

**85-2501 Department of Health and Human Services; establish program to provide stipends; funding; application process.**

To facilitate improved quality in the work of employees providing child welfare services, the Department of Health and Human Services, in collaboration with accredited social work education programs at Nebraska's colleges and universities, shall establish a program to provide stipends for undergraduate and graduate social work students enrolled in such colleges and universities who are committed to working in the field of child welfare services. Funds available under Title IV-E of the federal Social Security Act, as such act existed on January 1, 2015, shall be used to pay for such stipends. The department and the governing boards of such colleges and universities shall develop an application process for eligible students and, based on the amount of funds available, shall determine the amount of such stipend to be awarded to each eligible student. The department and the governing boards may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2015, LB199, § 1.

## ARTICLE 26 LAW ENFORCEMENT EDUCATION ACT

### Section

85-2601. Act, how cited.

85-2602. Terms, defined.

85-2603. Law enforcement officer; waiver of tuition; application; certificate of verification; notice of eligibility or ineligibility; contents.

85-2604. Rules and regulations.

**85-2601 Act, how cited.**

Sections 85-2601 to 85-2604 shall be known and may be cited as the Law Enforcement Education Act.

**Source:** Laws 2016, LB906, § 1.

**85-2602 Terms, defined.**

For purposes of the Law Enforcement Education Act:

(1) Associate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least sixty semester credit hours or an equivalent that can be shown to accomplish the same goal. Associate degree program does not include a baccalaureate degree program;

(2) Baccalaureate degree program means a degree program at a community college, state college, or state university which typically requires completion of an organized program of study of at least one hundred twenty semester credit hours or an equivalent that can be shown to accomplish the same goal;

(3) Community college means a public postsecondary educational institution which is part of the community college system and includes all branches and campuses of such institution located within the State of Nebraska;

(4) Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the State of Nebraska or any political subdivision of the state for more than one hundred hours per year and who is authorized by law to make arrests;

(5) Law enforcement agency means a police department in a municipality, a sheriff's office, and the Nebraska State Patrol;

(6) State college means a public postsecondary educational institution which is part of the Nebraska state college system and includes all branches and campuses of such institution located within the State of Nebraska;

(7) State university means a public postsecondary educational institution which is part of the University of Nebraska and includes all branches and campuses of such institution located within the State of Nebraska; and

(8) Tuition means the charges and cost of tuition as set by the governing body of a state university, state college, or community college.

**Source:** Laws 2016, LB906, § 2.

**85-2603 Law enforcement officer; waiver of tuition; application; certificate of verification; notice of eligibility or ineligibility; contents.**

(1) A law enforcement officer shall be entitled to a waiver of thirty percent of the resident tuition charges of any state university, state college, or community college if the officer:

(a) Maintains satisfactory performance with his or her law enforcement agency;

(b) Meets all admission requirements of the state university, state college, or community college; and

(c) Pursues studies leading to a degree that relates to a career in law enforcement from an associate degree program or a baccalaureate degree program.

The officer may receive the tuition waiver for up to five years if he or she otherwise continues to be eligible for participation.

(2) The state university, state college, or community college shall waive thirty percent of the officer's tuition remaining due after subtracting awarded federal financial aid grants and state scholarships and grants for an eligible law enforcement officer during the time the officer is enrolled. To remain eligible, the officer must comply with all requirements of the institution for continued attendance and award of an associate degree or a baccalaureate degree.

(3) An application for the tuition waiver shall include a verification of the law enforcement officer's satisfactory performance as a law enforcement officer. It shall be the responsibility of the officer to obtain a certificate of verification from his or her superior officer in such officer's law enforcement agency

attesting to such officer's satisfactory performance. The officer shall include the certificate of verification when applying to the state university, state college, or community college in order to obtain tuition waiver upon initial enrollment.

(4) Within forty-five days after receipt of a completed application, the state university, state college, or community college shall send written notice of the law enforcement officer's eligibility or ineligibility for the tuition waiver. If the officer is determined not to be eligible for the tuition waiver, the notice shall include the reason or reasons for such determination and an indication that an appeal of the determination may be made pursuant to the Administrative Procedure Act.

**Source:** Laws 2016, LB906, § 3.

**Cross References**

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

**85-2604 Rules and regulations.**

Each state university, state college, or community college shall adopt and promulgate the procedures, rules, and regulations necessary to carry out the Law Enforcement Education Act.

**Source:** Laws 2016, LB906, § 4.





## CHAPTER 86

### TELECOMMUNICATIONS AND TECHNOLOGY

Article.

1. Telecommunications Regulation.
  - (g) Penalties. 86-163.
2. Telecommunications Consumer Protection.
  - (e) Intercepted Communications. 86-2,108, 86-2,112.
3. Universal Service.
  - (b) Nebraska Telecommunications Universal Service Fund Act. 86-316 to 86-328.
  - (c) Funding for Infrastructure Projects. 86-330.
4. Public Safety Systems.
  - (c) Enhanced Wireless 911 Services. 86-442 to 86-471.
5. Public Technology Infrastructure.
  - (f) Internet Enhancement. 86-579.
7. Telecommunications Rights-of-Way. 86-707.
9. Prepaid Wireless Surcharge Act. 86-902 to 86-905.
10. 911 Service System Act. 86-1001 to 86-1030.
11. Rural Broadband Task Force. 86-1101 to 86-1103.

#### ARTICLE 1

#### TELECOMMUNICATIONS REGULATION

##### (g) PENALTIES

Section

86-163. Commission; duties.

##### (g) PENALTIES

#### **86-163 Commission; duties.**

The commission shall file with the Clerk of the Legislature an annual report on or before September 30 of each year on the status of the Nebraska telecommunications industry. The report shall be submitted in electronic format. The report shall:

- (1) Describe the quality of telecommunications service being provided to the citizens of Nebraska;
- (2) Describe the availability of diverse and affordable telecommunications service to all of the people of Nebraska;
- (3) Describe the level of telecommunications service rates;
- (4) Describe the use and continued need for the Nebraska Telecommunications Universal Service Fund;
- (5) Describe the availability and location of 911 service and E-911 service as required by section 86-437;
- (6) Describe the availability and location of wireless 911 service or enhanced wireless 911 service as required by section 86-460;
- (7) Address the need for further legislation to achieve the purposes of the Nebraska Telecommunications Regulation Act;

(8) Address the funding level of the Nebraska Competitive Telephone Marketplace Fund and an accounting of commission expenses related to its duties under section 86-127; and

(9) Assess, based on information provided by public safety answering points, the level of wireless E-911 location accuracy compliance for wireless carriers.

**Source:** Laws 1986, LB 835, § 4; Laws 1991, LB 286, § 2; Laws 1997, LB 686, § 12; Laws 2001, LB 389, § 1; Laws 2001, LB 585, § 15; R.S.Supp.,2001, § 86-804; Laws 2002, LB 1105, § 62; Laws 2002, LB 1211, § 12; Laws 2012, LB782, § 243; Laws 2016, LB938, § 31.

## ARTICLE 2

### TELECOMMUNICATIONS CONSUMER PROTECTION

#### (e) INTERCEPTED COMMUNICATIONS

##### Section

86-2,108. Electronic communication service; remote computing service; notification requirements.

86-2,112. Attorney General or county attorney; discovery; additional order limiting notification.

#### (e) INTERCEPTED COMMUNICATIONS

##### **86-2,108 Electronic communication service; remote computing service; notification requirements.**

(1)(a) A governmental entity acting under subsection (2) of section 86-2,106 shall (i) when a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under such subsection for a period not to exceed ninety days if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result or (ii) when an administrative subpoena is obtained, delay the notification required under such subsection for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(b) For purposes of this section:

(i) Adverse result means:

(A) Endangering the life or physical safety of an individual;

(B) Flight from prosecution;

(C) Destruction of or tampering with evidence;

(D) Intimidation of potential witnesses; or

(E) Otherwise seriously jeopardizing an investigation or unduly delaying a trial; and

(ii) Supervisory official means the investigative agent in charge, the assistant investigative agent in charge, an equivalent of an investigating agency's headquarters or regional office, the chief prosecuting attorney, the first assistant prosecuting attorney, or an equivalent of a prosecuting attorney's headquarters or regional office.

(c) The governmental entity shall maintain a true copy of certification under subdivision (a)(ii) of this subsection.

(d) Extensions of the delay of notification provided in sections 86-2,106 and 86-2,107 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (2) of this section.

(e) Upon expiration of the period of delay of notification under subdivision (a) or (d) of this subsection, the governmental entity shall serve upon or deliver by registered or first-class mail to the customer or subscriber a copy of the process or request together with notice that:

(i) States with reasonable specificity the nature of the law enforcement inquiry; and

(ii) Informs such customer or subscriber:

(A) That information maintained for such customer or subscriber by the provider named in such process or request was supplied to or requested by that governmental entity and the date on which the supplying or request took place;

(B) That notification of such customer or subscriber was delayed;

(C) What governmental entity or court made the certification or determination pursuant to which that delay was made; and

(D) Which provision of sections 86-2,104 to 86-2,109 allowed such delay.

(2) A governmental entity acting under section 86-2,106, except as provided in subsection (1) of this section, may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result.

**Source:** Laws 1988, LB 899, § 19; R.S.1943, (1999), § 86-707.13; Laws 2002, LB 1105, § 170; Laws 2015, LB294, § 17.

**86-2,112 Attorney General or county attorney; discovery; additional order limiting notification.**

(1) The Attorney General or any county attorney may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of records including books, papers, documents, and tangible things which constitute or contain evidence relevant or material to the investigation or enforcement of the laws of this state when it reasonably appears that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska, and service of subpoenas may be made upon any publicly or privately held corporation, partnership, or other legal entity located within or outside the State of Nebraska. Witnesses summoned by the Attorney General or a county attorney shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

(2) The Attorney General or a county attorney may apply to a court for an order commanding the person or entity to which a subpoena is directed not to notify any other person of the existence of the subpoena. The court shall enter such an order if it determines that there is reason to believe that notification of

the existence of the subpoena will result in an adverse result, as such term is defined in section 86-2,108.

**Source:** Laws 1976, LB 583, § 3; Laws 1981, LB 204, § 221; R.S.1943, (1999), § 86-709; Laws 2002, LB 1105, § 174; Laws 2008, LB952, § 2; Laws 2015, LB294, § 18.

### ARTICLE 3 UNIVERSAL SERVICE

#### (b) NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT

Section

- 86-316. Act, how cited.
- 86-318. Definitions, where found.
- 86-320.02. Prepaid wireless telecommunications service provider, defined.
- 86-324. Nebraska Telecommunications Universal Service Fund; created; use; investment; commission; powers; administrative fine.
- 86-328. Annual public hearing; notice; fund level; Prepaid Wireless Surcharge Act; applicability.

#### (c) FUNDING FOR INFRASTRUCTURE PROJECTS

- 86-330. Unserved or underserved exchanges; reverse auction program; funding to providers; Public Service Commission; powers and duties.

#### (b) NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT

#### **86-316 Act, how cited.**

Sections 86-316 to 86-329 shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

**Source:** Laws 1997, LB 686, § 1; Laws 1999, LB 514, § 4; R.S.1943, (1999), § 86-1401; Laws 2002, LB 1105, § 194; Laws 2007, LB661, § 4; Laws 2018, LB157, § 1.  
Effective date July 19, 2018.

#### **86-318 Definitions, where found.**

For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 apply.

**Source:** Laws 1997, LB 686, § 3; Laws 2001, LB 389, § 3; R.S.Supp.,2001, § 86-1403; Laws 2002, LB 1105, § 196; Laws 2007, LB661, § 5; Laws 2018, LB157, § 2.  
Effective date July 19, 2018.

#### **86-320.02 Prepaid wireless telecommunications service provider, defined.**

Prepaid wireless telecommunications service provider means a wireless telecommunications company whose service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount or expiration of time.

**Source:** Laws 2018, LB157, § 3.  
Effective date July 19, 2018.

**86-324 Nebraska Telecommunications Universal Service Fund; created; use; investment; commission; powers; administrative fine.**

(1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the act.

(2) Notwithstanding the provisions of section 86-124, in addition to other provisions of the act, and to the extent not prohibited by federal law, the commission:

(a) Shall have authority and power to subject eligible telecommunications companies to service quality, customer service, and billing regulations. Such regulations shall apply only to the extent of any telecommunications services or offerings made by an eligible telecommunications company which are eligible for support by the fund. The commission shall be reimbursed from the fund for all costs related to drafting, implementing, and enforcing the regulations and any other services provided on behalf of customers pursuant to this subdivision;

(b) Shall have authority and power to issue orders carrying out its responsibilities and to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such orders or regulations adopted pursuant to the act;

(c) May withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with the commission's orders or regulations;

(d) Shall require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law. The commission shall require, as reasonably necessary, an annual audit of any telecommunications company to be performed by a third-party certified public accountant to insure the billing, collection, and remittance of a surcharge for universal service. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited;

(e) Shall require an audit of information provided by a telecommunications company to be performed by a third-party certified public accountant for purposes of calculating universal service fund payments to such telecommunications company. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited; and

(f) May administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.

(3) 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, and for the period July 1, 2017, through June 30, 2019, any interest earned by the fund shall be credited to the General Fund.

**Source:** Laws 1997, LB 686, § 5; Laws 1999, LB 514, § 5; Laws 2000, LB 1285, § 23; Laws 2001, LB 389, § 4; R.S.Supp.,2001, § 86-1405; Laws 2002, LB 1105, § 202; Laws 2002, LB 1211, § 13; Laws 2002, Second Spec. Sess., LB 37, § 1; Laws 2017, LB331, § 57.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**86-328 Annual public hearing; notice; fund level; Prepaid Wireless Surcharge Act; applicability.**

(1) Annually the commission shall hold a public hearing to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act. The commission shall publish notice of the hearing in at least one newspaper of general circulation in the state at least once each week for two consecutive weeks before the hearing. After the hearing, the commission shall determine the amount of the fund for the following year, including a reasonable reserve. In the initial year of the fund's operation, the commission shall determine the amount of the fund to be equivalent to the amount which, in the commission's judgment, after careful analysis, is necessary to keep approximately ninety-six percent of Nebraska households subscribed to local telecommunications service.

(2) In an emergency as determined by the commission, the commission may adjust the level of the fund, but only after a public hearing for such purpose.

(3) For purposes of service by a prepaid wireless telecommunications service provider, universal service fund contribution and surcharge obligations shall be governed by the Prepaid Wireless Surcharge Act, except that a prepaid wireless telecommunications service provider shall continue to be subject to the audit requirements in subdivision (2)(d) of section 86-324.

**Source:** Laws 1997, LB 686, § 9; R.S.1943, (1999), § 86-1409; Laws 2002, LB 1105, § 206; Laws 2018, LB157, § 4.  
Effective date July 19, 2018.

## Cross References

Annual report to Legislature, see section 86-163.

Prepaid Wireless Surcharge Act, see section 86-901.

(c) FUNDING FOR INFRASTRUCTURE PROJECTS

**86-330 Unserved or underserved exchanges; reverse auction program; funding to providers; Public Service Commission; powers and duties.**

Based on consumer complaints or upon its own motion, the Public Service Commission may open a docket to consider the implementation and operation of a reverse auction program that awards funding to broadband Internet service providers to support high-speed Internet infrastructure deployment projects in unserved or underserved exchanges within the State of Nebraska. The commission may, in its discretion, withhold funding from the Nebraska Telecommunications Universal Service Fund to any telecommunications company that has not served, to the commission's satisfaction, those areas with service that meets the criteria for successful investment of funding from the Nebraska Telecommunications Universal Service Fund.

The commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska Telecommunications Universal Service Fund from any recipient, including the provision of notice and the right to a hearing prior to the issuance of an order withdrawing such funding. If the commission withdraws funding from the Nebraska Telecommunications Universal Service Fund from any telecommuni-

cations company, the commission may use the funding that is withdrawn to implement and operate a reverse auction program, except that any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted. The commission shall have wide discretion in the design, implementation, and operation of a reverse auction program but may use as a guide the program designed by the Federal Communications Commission in its Connect America Fund Phase II Auction process.

**Source:** Laws 2018, LB994, § 4.  
Operative date July 1, 2018.

## ARTICLE 4 PUBLIC SAFETY SYSTEMS

### (c) ENHANCED WIRELESS 911 SERVICES

Section

- 86-442. Act, how cited.
- 86-443.01. Repealed. Laws 2018, LB993, § 20.
- 86-458. Public hearing; commission; duties.
- 86-459. Wireless carrier; duties; administrative fine.
- 86-462. Advisory board; duties.
- 86-463. Repealed. Laws 2018, LB993, § 20.
- 86-465. Commission; advisory board; duties.
- 86-466. Compensation for costs.
- 86-471. Repealed. Laws 2018, LB993, § 20.

### (c) ENHANCED WIRELESS 911 SERVICES

**86-442 Act, how cited.**

Sections 86-442 to 86-470 shall be known and may be cited as the Enhanced Wireless 911 Services Act.

**Source:** Laws 2002, LB 1105, § 243; Laws 2003, LB 187, § 29; Laws 2006, LB 1222, § 3; Laws 2007, LB661, § 16; Laws 2013, LB595, § 1; Laws 2018, LB993, § 1.  
Effective date April 5, 2018.

**86-443.01 Repealed. Laws 2018, LB993, § 20.**

**86-458 Public hearing; commission; duties.**

The commission shall hold a public hearing annually to determine the amount of revenue necessary to carry out the Enhanced Wireless 911 Services Act and the 911 Service System Act. After the hearing, the commission shall determine the amount of money to be deposited in the 911 Service System Fund for the following year and shall set the surcharge subject to the limitation in section 86-457.

**Source:** Laws 2001, LB 585, § 3; R.S.Supp.,2001, § 86-2203; Laws 2002, LB 1105, § 259; Laws 2016, LB938, § 32; Laws 2018, LB993, § 2.  
Effective date April 5, 2018.

#### Cross References

911 Service System Act, see section 86-1001.

**86-459 Wireless carrier; duties; administrative fine.**

(1) Each wireless carrier shall remit monthly to the commission the amounts collected pursuant to section 86-457 together with any forms required by the commission no later than sixty days after the last day of the month. The commission shall remit the funds to the State Treasurer for credit to the 911 Service System Fund.

(2) As the commission may require, each wireless carrier, except a wireless carrier whose users have no 911 service, shall report to the commission on a quarterly basis for each county in a manner prescribed by the commission the following information: (a) The number of telephone numbers or functional equivalents served; (b) the number of telephone numbers or functional equivalents from which it has collected surcharge revenue; (c) the number of wireless towers by county; and (d) the current implementation status of enhanced wireless 911 service in each county served by that wireless carrier.

(3) The wireless carrier shall maintain all records required by this section, records of the amounts collected pursuant to section 86-457, and remittance records for a period of five years after the date of remittance to the fund. The commission may require an audit of any wireless carrier's books and records concerning the collection and remittance of any amounts collected pursuant to the Enhanced Wireless 911 Services Act. The costs of any audit required by the commission shall, at the commission's discretion, be paid by the audited wireless carrier. A wireless carrier shall not be required to pay for more than one remittance audit or more than one collection audit per year, unless the commission orders subsequent audits for good cause.

(4) Each wireless carrier shall comply with all commission rules and regulations regarding enhanced wireless 911 service.

(5) Each wireless carrier shall comply with this section regardless of whether the wireless carrier receives reimbursement from the fund. Wireless carriers failing to comply with this section may be administratively fined by the commission pursuant to section 75-156.

**Source:** Laws 2001, LB 585, § 4; R.S.Supp., 2001, § 86-2204; Laws 2002, LB 1105, § 260; Laws 2006, LB 1222, § 9; Laws 2007, LB661, § 24; Laws 2008, LB755, § 9; Laws 2018, LB993, § 3.  
Effective date April 5, 2018.

#### **86-462 Advisory board; duties.**

(1) The advisory board shall make recommendations to the commission regarding the implementation of the Enhanced Wireless 911 Services Act, including:

(a) The allocation of funds from the 911 Service System Fund as specified in section 86-465;

(b) Rules and regulations necessary to carry out the act;

(c) Any adjustments in the surcharge amount to recommend to the Legislature; and

(d) The resolution of any disputes between public safety answering points and wireless carriers.



(2) The commission may approve and implement any recommendations of the advisory board.

**Source:** Laws 2001, LB 585, § 7; R.S.Supp.,2001, § 86-2207; Laws 2002, LB 1105, § 263; Laws 2018, LB993, § 4.  
Effective date April 5, 2018.

**86-463 Repealed. Laws 2018, LB993, § 20.**

**86-465 Commission; advisory board; duties.**

(1) The commission shall, in consultation with the advisory board:

(a) Determine the costs to implement wireless automatic location identification;

(b) Determine the level of funding needed to trigger disbursements pursuant to the Enhanced Wireless 911 Services Act;

(c) Determine the percentage of the 911 Service System Fund to be allocated to each funding purpose, including the percentage that shall be designated for funding 911 service under subdivision (2)(c) of this section;

(d) Determine how the funds distributed under subdivisions (2)(a) and (2)(c) of this section are to be allocated among the wireless carriers and the public safety answering points; and

(e) Establish a mechanism for determining the level of funding available to each public safety answering point and wireless carrier for costs determined to be eligible by the commission under subsection (2) of this section.

(2) The commission shall, in consultation with the advisory board, establish eligibility standards and criteria for applications for disbursements from the 911 Service System Fund and standards and criteria concerning the level of fund disbursement for each application. In establishing such criteria and standards, the following purposes may be eligible for funding:

(a) Costs incurred or to be incurred by wireless carriers to implement enhanced wireless 911 service pursuant to a service agreement with a public safety answering point or pursuant to a request for service from a public safety answering point. Such costs may include, but not be limited to, the portion of the costs for new equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provide enhanced wireless 911 service, costs to create or maintain any data base or data base elements used solely for enhanced wireless 911 service, and other costs of establishing enhanced wireless 911 service. The portion of the costs of equipment or services used in the wireless carrier's main infrastructure resulting in revenue to the wireless carrier is not eligible for funding;

(b) Costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service may include, but not be limited to, purchases of new equipment, costs of upgrades, modification and personnel training used solely to process the data elements of enhanced wireless 911 service, and maintenance costs and license fees for new equipment;

(c) Costs incurred or to be incurred by public safety answering points for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications services required for the provision of enhanced wireless 911 service; and

(d) Expenses incurred by members of the advisory board while performing duties required by the Enhanced Wireless 911 Services Act.

(3) A wireless carrier receiving funds from the 911 Service System Fund shall not directly assess any of the costs associated with the implementation or provision of enhanced wireless 911 service to any public safety answering point, county, or municipality without the express consent of the commission.

(4) The commission shall have any powers necessary to carry out the intent and purposes of the Enhanced Wireless 911 Services Act.

**Source:** Laws 2001, LB 585, § 10; R.S.Supp.,2001, § 86-2210; Laws 2002, LB 1105, § 266; Laws 2006, LB 1222, § 11; Laws 2008, LB755, § 10; Laws 2013, LB595, § 6; Laws 2018, LB993, § 5.  
Effective date April 5, 2018.

#### **86-466 Compensation for costs.**

(1) A public safety answering point and wireless carrier may be compensated for costs determined by the commission to be eligible for funding. The level of funding available to each public safety answering point and wireless carrier for eligible cost compensation may be limited based upon the mechanism established by the commission pursuant to section 86-465. The commission is not required to provide compensation for costs to more than one public safety answering point in any county. A public safety answering point or wireless carrier may apply for disbursement from the 911 Service System Fund by submitting a written application to the commission. The commission shall receive and review applications, including supporting documentation. The commission shall notify each applicant as to the commission's approval or disapproval of the application.

(2) Each entity that receives disbursements from the 911 Service System Fund shall make a full accounting of the money in a manner and form prescribed by the commission.

**Source:** Laws 2001, LB 585, § 11; R.S.Supp.,2001, § 86-2211; Laws 2002, LB 1105, § 267; Laws 2006, LB 1222, § 12; Laws 2018, LB993, § 6.  
Effective date April 5, 2018.

#### **86-471 Repealed. Laws 2018, LB993, § 20.**

### **ARTICLE 5**

#### **PUBLIC TECHNOLOGY INFRASTRUCTURE**

##### **(f) INTERNET ENHANCEMENT**

###### **Section**

86-579. Nebraska Internet Enhancement Fund; created; use; investment.

##### **(f) INTERNET ENHANCEMENT**

#### **86-579 Nebraska Internet Enhancement Fund; created; use; investment.**

The Nebraska Internet Enhancement Fund is created. The fund shall be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state. It is the intent of the Legislature that two hundred fifty thousand dollars shall

be appropriated to the fund to be used for startup costs and seed money for FY2001-02. The Public Service Commission may receive gifts, contributions, property, and equipment from public and private sources for purposes of the fund. The fund shall consist of money appropriated by the Legislature, any money transferred pursuant to section 86-127, and gifts, grants, or bequests from any source, including money remitted to the fund pursuant to section 86-577 and any other federal, state, public, and private sources. Money in the fund shall be distributed by the commission pursuant to section 86-580. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Internet Enhancement 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 one hundred thousand dollars from the Nebraska Internet Enhancement Fund to the General Fund on or before July 15, 2003.

The State Treasurer shall transfer fifty thousand dollars from the Nebraska Internet Enhancement Fund to the Rural Broadband Task Force Fund on or before July 15, 2018.

**Source:** Laws 2001, LB 827, § 6; R.S.Supp.,2001, § 86-2306; Laws 2002, LB 1105, § 349; Laws 2002, LB 1211, § 26; Laws 2003, LB 408, § 8; Laws 2018, LB994, § 7.  
Operative date July 1, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

## ARTICLE 7

### TELECOMMUNICATIONS RIGHTS-OF-WAY

#### Section

86-707. Right-of-way; state and federal highways; regulation by Department of Transportation.

#### **86-707 Right-of-way; state and federal highways; regulation by Department of Transportation.**

If the right to construct, operate, and maintain the telecommunications lines and related facilities is granted along, upon, across, or under a state or federal highway, the location and installation of such lines and related facilities, insofar as they pertain to the present and future use of the right-of-way for highway purposes, is subject to rules and regulations of the Department of Transportation. If the future use of the state or federal highway requires the moving or relocating of the facilities, such facilities shall be removed or relocated by the owner at the owner's cost and expense and as directed by the Department of Transportation except as provided by section 39-1304.02.

**Source:** Laws 1943, c. 231, § 1, p. 778; R.S.1943, § 86-303.01; Laws 1957, c. 171, § 3, p. 592; Laws 1999, LB 496, § 4; R.S.1943, (1999), § 86-303.01; Laws 2002, LB 1105, § 412; Laws 2017, LB339, § 296.

## ARTICLE 9

## PREPAID WIRELESS SURCHARGE ACT

## Section

- 86-902. Terms, defined.
- 86-903. Prepaid wireless surcharge; determination; Department of Revenue; duties; collection; disclosure; liability of consumer.
- 86-904. Sellers; remittance; deduction authorized; audit and appeal provisions applicable; Department of Revenue; duties; deduction.
- 86-905. Prepaid wireless surcharge; no imposition for other tax, fee, surcharge, or other charge.

**86-902 Terms, defined.**

For purposes of the Prepaid Wireless Surcharge Act:

(1) Consumer means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(2) Prepaid wireless surcharge means the charge that is required to be collected by a seller from a consumer in the amount established under section 86-903;

(3) Prepaid wireless telecommunications service means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount or expiration of time;

(4) Provider means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission;

(5) Retail transaction means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;

(6) Seller means a person who sells prepaid wireless telecommunications service to another person; and

(7) Wireless telecommunications service means mobile service as defined by 47 C.F.R. 20.3, as such section existed on July 19, 2012.

**Source:** Laws 2012, LB1091, § 2; Laws 2018, LB157, § 5.  
Effective date July 19, 2018.

**86-903 Prepaid wireless surcharge; determination; Department of Revenue; duties; collection; disclosure; liability of consumer.**

(1) The Department of Revenue shall determine the prepaid wireless surcharge annually, effective January 1, based on the charges described in subsection (2) of this section as in effect on the preceding July 1. The department shall provide not less than ninety days' advance notice of any change in the prepaid wireless surcharge on the department's web site.

(2) The rate of the prepaid wireless surcharge shall be the sum of the following three percentages, rounded up to the nearest tenth of one percent:

(a) The percentage obtained by dividing (i) the amount of the wireless E-911 surcharge authorized under subdivision (1)(b) of section 86-457 by (ii) fifty;

(b) The percentage obtained by dividing (i) the amount of the Nebraska Telecommunications Relay System Fund surcharge set by the Public Service

Commission pursuant to the Telecommunications Relay System Act by (ii) fifty; and

(c) The percentage obtained by multiplying (i) the Nebraska Telecommunications Universal Service Fund surcharge percentage rate set by the Public Service Commission by (ii) one minus the Federal Communications Commission safe harbor percentage for determining the interstate portion of a fixed monthly wireless charge.

(3) The Department of Revenue shall provide the Public Service Commission with prepaid wireless surcharge calculation and collection data upon request by the commission.

(4) Beginning January 1, 2013, each seller shall collect the prepaid wireless surcharge from the consumer with respect to each retail transaction occurring in this state. The seller shall disclose the amount of the prepaid wireless surcharge either separately on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise. A retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of section 77-2703.

(5) The prepaid wireless surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless surcharges that the seller collects from consumers as provided in section 86-904, including all such charges that the seller is deemed to collect when the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(6) The amount of the prepaid wireless surcharge that is collected by a seller from a consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(7) For purposes of subsection (4) of this section, when prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized price, the seller shall elect to treat the price of the prepaid wireless telecommunications service (a) as such entire non-itemized price, (b) if the amount of prepaid wireless telecommunications service is disclosed to the consumer as a dollar amount, as such dollar amount, or (c) if the retailer can identify the portion of the price that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes, as such portion. If the amount of prepaid wireless telecommunications service is denominated as ten minutes or less or as five dollars or less, the seller may elect not to collect any prepaid wireless surcharge with respect to the retail transaction.

**Source:** Laws 2012, LB1091, § 3; Laws 2018, LB157, § 6.  
Effective date July 19, 2018.

## Cross References

Telecommunications Relay System Act, see section 86-301.

**86-904 Sellers; remittance; deduction authorized; audit and appeal provisions applicable; Department of Revenue; duties; deduction.**

(1) Sellers shall remit collected prepaid wireless surcharges to the Department of Revenue in the manner provided in the Nebraska Revenue Act of 1967 with respect to sales tax. Sellers shall remit the prepaid wireless surcharges to the department on a monthly basis, except that if a seller collected less than one thousand dollars of prepaid wireless surcharges in the prior year, the seller may remit on an annual basis. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to sales tax.

(2) A seller shall be permitted to deduct and retain three percent of prepaid wireless surcharges that are collected by the seller from consumers.

(3) The audit and appeal procedures applicable to sales tax under the Nebraska Revenue Act of 1967 shall apply to prepaid wireless surcharges.

(4) The Department of Revenue shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for sales tax purposes.

(5) After deducting an amount, not to exceed one-half of one percent of charges, to be retained by the department to reimburse its direct costs of administering the collection and remittance of prepaid wireless surcharges, the department shall remit all collected prepaid wireless surcharges to the State Treasurer for credit to the 911 Service System Fund, the Nebraska Telecommunications Relay System Fund, and the Nebraska Telecommunications Universal Service Fund in the proportions that the respective corresponding components of the prepaid wireless surcharge under subsection (2) of section 86-903 bear to the total prepaid wireless surcharge.

**Source:** Laws 2012, LB1091, § 4; Laws 2018, LB157, § 7; Laws 2018, LB993, § 7.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB157, section 7, with LB993, section 7, to reflect all amendments.

**Note:** Changes made by LB993 became effective April 5, 2018. Changes made by LB157 became effective July 19, 2018.

## Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

**86-905 Prepaid wireless surcharge; no imposition for other tax, fee, surcharge, or other charge.**

The prepaid wireless surcharge shall be the only funding obligation imposed with respect to prepaid wireless telecommunications service for E-911 service, telecommunications relay service, and universal service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for purposes of funding E-911 service, telecommunications relay service, or universal service, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

**Source:** Laws 2012, LB1091, § 5; Laws 2018, LB157, § 8.  
Effective date July 19, 2018.

## ARTICLE 10

## 911 SERVICE SYSTEM ACT

Section	
86-1001.	Act, how cited.
86-1002.	Purpose of act.
86-1003.	Legislative intent.
86-1004.	Definitions, where found.
86-1005.	Basic 911 service, defined.
86-1006.	Commission, defined.
86-1006.01.	Committee, defined.
86-1007.	Emergency services, defined.
86-1008.	Enhanced-911 service, defined.
86-1009.	Enhanced wireless 911 service, defined.
86-1010.	Interconnected voice over Internet protocol service, defined.
86-1011.	Internet protocol, defined.
86-1012.	Internet protocol-enabled service, defined.
86-1013.	Local governing body, defined.
86-1014.	Network, defined.
86-1015.	Next-generation 911, defined.
86-1016.	Next-generation 911 service, defined.
86-1017.	911 call, defined.
86-1018.	911 service, defined.
86-1019.	911 service system, defined.
86-1020.	Originating service provider, defined.
86-1021.	Public safety agency, defined.
86-1022.	Public safety answering point, defined.
86-1023.	Service user, defined.
86-1024.	Stakeholder, defined.
86-1025.	Commission; duties.
86-1025.01.	911 Service System Advisory Committee; created; members; duties; vacancy; terms; expenses.
86-1026.	State 911 director.
86-1027.	Plan for 911 service system; contents; public hearings; report.
86-1028.	911 Service System Fund; created; use; investment.
86-1029.	Authority of commission; how construed.
86-1029.01.	Federal and other funds; commission; powers.
86-1029.02.	Immunity from liability.
86-1029.03.	Rules and regulations.
86-1030.	Repealed. Laws 2018, LB993, § 20.

**86-1001 Act, how cited.**

Sections 86-1001 to 86-1029.03 shall be known and may be cited as the 911 Service System Act.

**Source:** Laws 2016, LB938, § 1; Laws 2018, LB993, § 8.  
Effective date April 5, 2018.

**86-1002 Purpose of act.**

The purpose of the 911 Service System Act is to establish the Public Service Commission as the statewide implementation and coordinating authority to plan, implement, coordinate, manage, maintain, and provide funding assistance for a 911 service system consistent and compatible with national public safety standards advanced by recognized standards and development organizations.

**Source:** Laws 2016, LB938, § 2.

**86-1003 Legislative intent.**

It is the intent of the Legislature that:

(1) The commission plan, implement, coordinate, manage, maintain, and provide funding assistance for a cost-efficient 911 service system;

(2) The commission provide for the coordination of 911 service on a state-wide basis;

(3) Local governing bodies be responsible for the dispatch and provision of emergency services;

(4) As part of the coordination of statewide 911 service, the commission secure stakeholder support and provide public education, training, standards enforcement, dispute resolution, and program evaluation for public safety answering points;

(5) The jurisdictions of the state, regional, and local governing bodies be clearly defined and aligned to produce the most efficient provision of 911 service, including next-generation 911 service capability;

(6) The commission adopt statewide uniform standards for technical support, training efficiency, and quality assurance for public safety answering points;

(7) The express authority granted to the commission to implement the 911 Service System Act not be deemed to supersede or otherwise modify section 86-124 or to provide the commission with any additional authority not provided by law existing on April 19, 2016, including, but not limited to, regulatory authority over originating service providers; and

(8) Except as specifically provided in the 911 Service System Act, nothing in the 911 Service System Act be deemed to supersede or modify any commission authority provided by law or any commission order, rule, or regulation existing on April 19, 2016.

**Source:** Laws 2016, LB938, § 3.

#### **86-1004 Definitions, where found.**

For purposes of the 911 Service System Act, the definitions found in sections 86-1005 to 86-1024 apply.

**Source:** Laws 2016, LB938, § 4; Laws 2018, LB993, § 9.  
Effective date April 5, 2018.

#### **86-1005 Basic 911 service, defined.**

Basic 911 service means an emergency telephone system which automatically connects a 911 call to a designated public safety answering point.

**Source:** Laws 2016, LB938, § 5.

#### **86-1006 Commission, defined.**

Commission means the Public Service Commission.

**Source:** Laws 2016, LB938, § 6.

#### **86-1006.01 Committee, defined.**

Committee means the 911 Service System Advisory Committee.

**Source:** Laws 2018, LB993, § 10.  
Effective date April 5, 2018.



**86-1007 Emergency services, defined.**

Emergency services means the provision through a public safety agency of firefighting, law enforcement, ambulance, emergency, medical, or other public emergency services, as determined by a local governing body, to respond to and manage emergency incidents.

**Source:** Laws 2016, LB938, § 7.

**86-1008 Enhanced-911 service, defined.**

Enhanced-911 service has the same meaning as in section 86-425.

**Source:** Laws 2016, LB938, § 8.

**86-1009 Enhanced wireless 911 service, defined.**

Enhanced wireless 911 service has the same meaning as in section 86-448.

**Source:** Laws 2016, LB938, § 9.

**86-1010 Interconnected voice over Internet protocol service, defined.**

Interconnected voice over Internet protocol service means an interconnected voice over Internet protocol service as defined in 47 C.F.R. part 9, as such regulations existed on January 1, 2016.

**Source:** Laws 2016, LB938, § 10.

**86-1011 Internet protocol, defined.**

Internet protocol means the method by which data is sent from one computer to another on the Internet or other networks.

**Source:** Laws 2016, LB938, § 11.

**86-1012 Internet protocol-enabled service, defined.**

Internet protocol-enabled service means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables a service user to send or receive a communication in Internet protocol format including, but not limited to, voice, data, or video.

**Source:** Laws 2016, LB938, § 12.

**86-1013 Local governing body, defined.**

Local governing body means a county board, city council of a city, board of trustees of a village, board of directors of any rural or suburban fire protection district, or any governing body of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

**Source:** Laws 2016, LB938, § 13.

**Cross References**

**Interlocal Cooperation Act**, see section 13-801.

**Joint Public Agency Act**, see section 13-2501.

**86-1014 Network, defined.**

Network means (1) a legacy telecommunications network that supports basic 911 service and enhanced-911 service or (2) a managed Internet protocol network that is used for 911 calls, that can be shared by all public safety

answering points, and that provides the Internet protocol transport infrastructure upon which independent application platforms and core functional processes can be deployed, including, but not limited to, those necessary for providing next-generation 911 service capability. A network may be constructed from a mix of dedicated and shared facilities and may be interconnected at local, regional, state, national, and international levels.

**Source:** Laws 2016, LB938, § 14.

**86-1015 Next-generation 911, defined.**

Next-generation 911 means an Internet protocol-based system (1) comprised of networks, functional elements, and data bases that replicate basic 911 service and enhanced-911 service features and functions and provide additional capabilities and (2) designed to provide access to emergency services from all connected communications sources and to provide multimedia data capabilities for public safety answering points and other emergency services organizations.

**Source:** Laws 2016, LB938, § 15.

**86-1016 Next-generation 911 service, defined.**

Next-generation 911 service means 911 service using in whole or in part next-generation 911.

**Source:** Laws 2016, LB938, § 16.

**86-1017 911 call, defined.**

911 call means any form of communication requesting any type of emergency services by contacting a public safety answering point, including voice or nonvoice communications as well as transmission of any analog or digital data. 911 call includes a voice call, video call, text message, or data-only call.

**Source:** Laws 2016, LB938, § 17.

**86-1018 911 service, defined.**

911 service means the service a public safety answering point uses to receive and process 911 calls over a 911 service system.

**Source:** Laws 2016, LB938, § 18.

**86-1019 911 service system, defined.**

911 service system means a coordinated system of technologies, software applications, data bases, customer-premise equipment components, and operations and management procedures used to provide 911 service through the operation of an efficient and effective network for accepting, processing, and delivering 911 calls to a public safety answering point, including, but not limited to, basic 911 service, enhanced-911 service, enhanced wireless 911 service, next-generation 911 service, and any emerging technologies, networks, and systems that allow access to 911 service.

**Source:** Laws 2016, LB938, § 19.

**86-1020 Originating service provider, defined.**

Originating service provider means an entity that provides the capability for customers to originate 911 calls to public safety answering points.

**Source:** Laws 2016, LB938, § 20.

**86-1021 Public safety agency, defined.**

Public safety agency means an agency which provides emergency services.

**Source:** Laws 2016, LB938, § 21.

**86-1022 Public safety answering point, defined.**

Public safety answering point means a local governmental entity responsible for receiving 911 calls and processing those calls according to a specific operational policy.

**Source:** Laws 2016, LB938, § 22.

**86-1023 Service user, defined.**

Service user means any person who initiates a 911 call to receive emergency services.

**Source:** Laws 2016, LB938, § 23.

**86-1024 Stakeholder, defined.**

Stakeholder means a public safety answering point, a public safety agency, and any person, organization, agency of government, originating service provider, or other organization that has a vital interest in the 911 service system.

**Source:** Laws 2016, LB938, § 24.

**86-1025 Commission; duties.**

The commission shall:

(1) Serve as the statewide coordinating authority for the implementation of the 911 service system;

(2) Be responsible for statewide planning, implementation, coordination, funding assistance, deployment, and management and maintenance of the 911 service system to ensure that coordinated 911 service is provided to all residents of the state at a consistent level of service in a cost-effective manner;

(3) Be responsible for establishing mandatory and uniform technical and training standards applicable to public safety answering points and adopting and promulgating rules and regulations applicable to public safety answering points for quality assurance standards;

(4) Appoint the members of the committee and act on the committee's recommendations as provided in section 86-1025.01; and

(5)(a) Determine how to allocate the 911 Service System Fund in order to facilitate the planning, implementation, coordination, operation, management, and maintenance of the 911 service system;

(b) Create a mechanism for determining the level of funding available to or for the benefit of local governing bodies, public safety answering points, and third-party service or infrastructure providers for costs determined to be eligible by the commission under subdivision (5)(c) of this section; and

(c) Establish standards and criteria concerning disbursements from the 911 Service System Fund for the planning, implementation, coordination, operation, management, and maintenance of the 911 service system. In establishing such standards and criteria, the following may be eligible for funding:

(i) Costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service, including, but not limited to, (A) acquisition of new equipment and related maintenance costs and license fees, (B) upgrades and modifications, (C) delivering next-generation 911 core services, and (D) training personnel used to provide 911 services; and

(ii) Costs incurred by or on behalf of governing bodies or public safety answering points for the acquisition, installation, maintenance, and operation of telecommunications equipment and telecommunications service required for the provision of 911 service.

**Source:** Laws 2016, LB938, § 25; Laws 2018, LB993, § 12.  
Effective date April 5, 2018.

**86-1025.01 911 Service System Advisory Committee; created; members; duties; vacancy; terms; expenses.**

(1) The 911 Service System Advisory Committee is created. The committee shall advise the commission concerning the implementation, coordination, operation, management, maintenance, and funding of the 911 service system and provide input on technical training and quality assurance. The state 911 director and the Chief Information Officer or his or her designee shall serve as ex officio members. The committee shall include the following individuals appointed by the commission:

(a) Four representatives of public safety agencies within the state, including an emergency manager, a member of a law enforcement agency, a member of a fire department, and a member of an emergency medical service as defined in section 38-1207;

(b) Two county officials or employees;

(c) Two municipal officials or employees;

(d) Two representatives of the telecommunications industry;

(e) Two managers of public safety answering points, one of whom is employed by a county sheriff and one of whom is not employed by a county sheriff;

(f) One representative of the Nebraska Association of County Officials; and

(g) One representative of the League of Nebraska Municipalities.

(2) Of the fourteen appointed members of the committee described in subdivisions (1)(a) through (g) of this section, at least four members shall be appointed from each of the three congressional districts. The appointed members of the committee shall serve for terms of three years. A vacancy shall be filled for the remainder of the unexpired term. The committee shall annually select a chairperson and vice-chairperson and meet as often as necessary to carry out its duties. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The committee shall make any recommendations to the commission regarding the exercise of the commission's duties administering the 911 service system pursuant to section 86-1025, including recommending the adoption and promulgation of any rules and regulations necessary to carry out the purposes

of the 911 Service System Act or the introduction of any legislation. The commission may consider and implement any such recommendations.

**Source:** Laws 2018, LB993, § 11.  
Effective date April 5, 2018.

**86-1026 State 911 director.**

The commission shall appoint a state 911 director to manage the department established within the commission for the 911 service system. The commission shall ensure that the department has all necessary staffing and resources. The commission may retain contracted experts or consultants who may be required for the administration of the 911 Service System Act.

**Source:** Laws 2016, LB938, § 26; Laws 2018, LB993, § 13.  
Effective date April 5, 2018.

**86-1027 Plan for 911 service system; contents; public hearings; report.**

(1) The commission and the state 911 director shall develop and prepare a plan for a 911 service system, to be approved by the commission, and to be implemented by the commission and the state 911 director on or after July 1, 2018. The commission shall hold at least two public hearings on the plan: One hearing at least ninety days prior to the adoption of the plan; and one hearing at least thirty days prior to the adoption of the plan. The commission shall present the adopted plan to the Appropriations Committee of the Legislature and the Transportation and Telecommunications Committee of the Legislature no later than December 1, 2017. The state 911 director, with the approval of the commission, shall prepare and provide a report to the Appropriations Committee and the Transportation and Telecommunications Committee on the progress of the development of the plan no later than February 1, 2017. The report shall be submitted electronically.

(2) The plan adopted by the commission shall, at a minimum, detail the following:

(a) The costs associated with the implementation and estimated ongoing operation and maintenance of the 911 service system. The discussion of costs shall detail which costs the commission determines should be paid from the 911 Service System Fund, which costs would be the obligation of local governing bodies, and how the proposed costs represent a cost-effective plan;

(b) Recommendations to the Legislature for cost recovery for the implementation, operation, and maintenance of the 911 service system;

(c) The commission's proposal for carrying out its role as coordinator of the 911 service system;

(d) A recommendation of the number of public safety answering points that should be maintained in the state that are capable of next-generation 911 service; and

(e) Recommendations for any additional legislation required to implement the 911 service system.

**Source:** Laws 2016, LB938, § 27; Laws 2018, LB993, § 17.  
Effective date April 5, 2018.

**86-1028 911 Service System Fund; created; use; investment.**

(1) The 911 Service System Fund is created. The fund shall consist of surcharges collected pursuant to sections 86-457 and 86-904, money transferred from the Enhanced Wireless 911 Fund, any federal funds received for implementation and development of 911 service, and any other money designated for credit to the 911 Service System Fund. The fund shall be used for the costs of administering the fund, for the purposes specified in section 86-465 unless otherwise directed by federal law with respect to any federal funds, and for the purposes specified in the 911 Service System Act. The costs of administering the 911 Service System Fund shall be kept to a minimum.

(2) The fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or 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, and for the period July 1, 2017, through June 30, 2019, any interest earned by the fund shall be credited to the General Fund.

(3) Money in the 911 Service System Fund may be used to pay for costs incurred by or on behalf of governing bodies or public safety answering points to provide 911 service that are determined by the commission to be eligible for funding. The commission is not required to provide funding from the 911 Service System Fund to more than one public safety answering point in any county. Each entity that receives disbursements from the fund under this subsection shall make a full accounting of the money in a manner and form prescribed by the commission.

(4) The State Treasurer shall transfer any money in the Enhanced Wireless 911 Fund on July 1, 2018, to the 911 Service System Fund.

**Source:** Laws 2016, LB938, § 28; Laws 2018, LB993, § 18.  
Effective date April 5, 2018.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

### **86-1029 Authority of commission; how construed.**

The express authority granted to the commission to implement the 911 Service System Act shall not be deemed to supersede or otherwise modify section 86-124 or to provide the commission with any additional authority not provided by law existing on April 19, 2016, including, but not limited to, regulatory authority over originating service providers.

**Source:** Laws 2016, LB938, § 29.

### **86-1029.01 Federal and other funds; commission; powers.**

The commission may apply for any federal or other funds available for next-generation 911 service and may distribute such federal funds consistent with federal law and other funds consistent with the directives, purposes, or conditions of such other funds. Except for intentional acts, the commission shall be immune from liability or the payment of damages in applying for any such

federal funds. The state 911 director shall be the designated single point of contact for any federal 911 grant program.

**Source:** Laws 2018, LB993, § 14.  
Effective date April 5, 2018.

#### **86-1029.02 Immunity from liability.**

Any person involved in the provision of next-generation 911 service who: (1) Receives, develops, collects, or processes information for any 911 data base; (2) provides local exchange, interexchange, or transport service in connection with any next-generation 911 service; (3) relays, transfers, operates, maintains, or provides next-generation 911 service or systems capabilities; or (4) provides next-generation 911 communications service for emergency service providers shall, except for failure to use reasonable care or for intentional acts, be immune from liability or the payment of damages in the performance of installing, maintaining, or providing next-generation 911 service.

**Source:** Laws 2018, LB993, § 15.  
Effective date April 5, 2018.

#### **86-1029.03 Rules and regulations.**

The commission shall adopt and promulgate rules and regulations necessary to carry out the 911 Service System Act.

**Source:** Laws 2018, LB993, § 16.  
Effective date April 5, 2018.

#### **86-1030 Repealed. Laws 2018, LB993, § 20.**

### **ARTICLE 11**

#### **RURAL BROADBAND TASK FORCE**

##### Section

- 86-1101. Broadband telecommunications service; legislative intent.
- 86-1102. Rural Broadband Task Force; created; members; advisory groups; staff assistance; powers; duties; expenses; meetings; report.
- 86-1103. Rural Broadband Task Force Fund; created; use; investment.

#### **86-1101 Broadband telecommunications service; legislative intent.**

The Legislature finds and declares that:

(1) The availability, quality, and affordability of broadband telecommunications service is important to the residents of Nebraska; and

(2) Because availability, quality, and affordability of broadband telecommunications service is lacking in certain rural areas in Nebraska, combined with greater investment in urban areas, the state may be facing a digital divide.

It is the intent of the Legislature that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence. It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications service at a minimum download speed of twenty-five

megabits per second and a minimum upload speed of three megabits per second.

**Source:** Laws 2018, LB994, § 1.  
Operative date July 1, 2018.

**86-1102 Rural Broadband Task Force; created; members; advisory groups; staff assistance; powers; duties; expenses; meetings; report.**

(1) The Rural Broadband Task Force is hereby created. Task force members shall include the chairperson of the Transportation and Telecommunications Committee of the Legislature and a member of the Legislature selected by the Executive Board of the Legislative Council who shall both serve as nonvoting, ex officio members, a member of the Public Service Commission who shall be selected by the chairperson of such commission, the chairperson of the Nebraska Information Technology Commission or his or her designee who shall act as chairperson of the task force, the Director of Economic Development or his or her designee, the Director of Agriculture or his or her designee, and the following members to be appointed by the Governor: A representative of the agribusiness community, a representative of the Nebraska business community, a representative of the regulated wireline telecommunications industry, a representative of the wireless telecommunications industry, a representative of the public power industry, a representative of health care providers, a representative of Nebraska postsecondary educational institutions, and a representative of rural schools offering kindergarten through grade twelve.

(2) The task force may appoint advisory groups to assist the task force in providing technical expertise and advice on any issue. The advisory groups may be composed of representatives of stakeholder groups which may include, but not necessarily be limited to, representatives from small and large wireline companies, wireless companies, public power districts, electric cooperative corporations, cable television companies, Internet service providers, low-income telecommunications and electric utility customers, health care providers, and representatives of educational sectors. No compensation or expense reimbursement shall be provided to any member of any advisory group appointed by the task force.

(3) The Nebraska Information Technology Commission shall provide staff assistance to the task force in consultation with staff from the Public Service Commission and other interested parties. The task force may hire consultants to assist in carrying out its duties. The task force shall review issues relating to availability, adoption, and affordability of broadband services in rural areas of Nebraska. In particular, the task force shall:

(a) Determine how Nebraska rural areas compare to neighboring states and the rest of the nation in average download and upload speeds and in subscription rates to higher speed tiers, when available;

(b) Examine the role of the Nebraska Telecommunications Universal Service Fund in bringing comparable and affordable broadband services to rural residents and any effect of the fund in deterring or delaying capital formation, broadband competition, and broadband deployment;

(c) Review the feasibility of alternative technologies and providers in accelerating access to faster and more reliable broadband service for rural residents;



(d) Examine alternatives for deployment of broadband services to areas that remain unserved or underserved, such as reverse auction programs described in section 86-330, public-private partnerships, funding for competitive deployment, and other measures, and make recommendations to the Public Service Commission to encourage deployment in such areas;

(e) Recommend state policies to effectively utilize state universal service fund dollars to leverage federal universal service fund support and other federal funding;

(f) Make recommendations to the Governor and Legislature as to the most effective and efficient ways that federal broadband rural infrastructure funds received after July 1, 2018, should be expended if such funds become available; and

(g) Determine other issues that may be pertinent to the purpose of the task force.

(4) Task force members shall serve on the task force without compensation but shall be entitled to receive reimbursement for any actual expenses incurred for such service as provided in sections 81-1174 to 81-1177.

(5) The task force shall meet at the call of the chairperson and shall present its findings in a report to the Executive Board of the Legislative Council no later than November 1, 2019, and by November 1 every odd-numbered year thereafter. The report shall be submitted electronically.

(6) For purposes of this section, broadband services means high-speed telecommunications capability at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second, and that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology.

**Source:** Laws 2018, LB994, § 2.

Operative date July 1, 2018.

### **86-1103 Rural Broadband Task Force Fund; created; use; investment.**

The Rural Broadband Task Force Fund is created. The fund shall be used to carry out the purposes of the Rural Broadband Task Force as described in section 86-1102. For administrative purposes, the fund shall be located in the Nebraska Information Technology Commission. The fund shall consist of money appropriated or transferred by the Legislature and gifts, grants, or bequests from any source, including federal, state, public, and private sources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2018, LB994, § 3.

Operative date July 1, 2018.

#### **Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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



## CHAPTER 87

### TRADE PRACTICES

Article.

3. Deceptive Trade Practices.
  - (a) Uniform Deceptive Trade Practices Act. 87-301 to 87-303.
4. Franchise Practices.
  - (a) Franchise Practices Act. 87-402, 87-404.
8. Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006. 87-801 to 87-808.

#### ARTICLE 3

#### DECEPTIVE TRADE PRACTICES

##### (a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

Section

- 87-301. Terms, defined.  
 87-302. Deceptive trade practices; enumerated.  
 87-303. Deceptive trade practices; damages; injunction; costs; additional remedy.

##### (a) UNIFORM DECEPTIVE TRADE PRACTICES ACT

#### **87-301 Terms, defined.**

For purposes of the Uniform Deceptive Trade Practices Act, unless the context otherwise requires:

(1) Access software provider means a provider of software, including client or server software, or enabling tools that do any one or more of the following: (a) Filter, screen, allow, or disallow content; (b) pick, choose, analyze, or digest content; or (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content;

(2) Appropriate inventory repurchase program means a program by which a plan or operation repurchases, upon request and upon commercially reasonable terms, when the salesperson's business relationship with the company ends, current and marketable inventory in the possession of the salesperson that was purchased by the salesperson for resale. Any such plan or operation shall clearly describe the program in its recruiting literature, sales manual, or contract with independent salespersons, including the disclosure of any inventory that is not eligible for repurchase under the program;

(3) Article means a product as distinguished from its trademark, label, or distinctive dress in packaging;

(4) Attorney General means the Attorney General of the State of Nebraska or the county attorney of any county with the consent and advice of the Attorney General;

(5) Cable operator means any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) Certification mark means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization;

(7) Collective mark means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization;

(8) Commercially reasonable terms means the repurchase of current and marketable inventory within twelve months from the date of purchase at not less than ninety percent of the original net cost, less appropriate setoffs and legal claims, if any;

(9) Compensation means a payment of any money, thing of value, or financial benefit;

(10) Consideration means anything of value, including the payment of cash or the purchase of goods, services, or intangible property. The term does not include the purchase of goods or services furnished at cost to be used in making sales and not for resale or time and effort spent in pursuit of sales or recruiting activities;

(11) Covered file-sharing program means a computer program, application, or software that enables the computer on which such program, application, or software is installed to designate files as available for searching by and copying to one or more other computers, to transmit such designated files directly to one or more other computers, and to request the transmission of such designated files directly from one or more other computers. Covered file-sharing program does not mean a program, application, or software designed primarily to operate as a server that is accessible over the Internet using the Internet Domain Name System, to transmit or receive email messages, instant messaging, real-time audio or video communications, or real-time voice communications, or to provide network or computer security, network management, hosting and backup services, maintenance, diagnostics, technical support or repair, or to detect or prevent fraudulent activities;

(12) Current and marketable has its plain and ordinary meaning but excludes inventory that is no longer within its commercially reasonable use or shelf-life period, was clearly described to salespersons prior to purchase as seasonal, discontinued, or special promotion products not subject to the plan or operation's inventory repurchase program, or has been used or opened;

(13) Information content provider means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service;

(14) Interactive computer service means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions;

(15) Inventory includes both goods and services, including company-produced promotional materials, sales aids, and sales kits that the plan or operation requires independent salespersons to purchase;

(16) Inventory loading means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount which exceeds that which the salesperson can expect to resell for ultimate consumption or to a consumer in a reasonable time period, or both;

(17) Investment means any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities, and services. It does not include real estate, securities registered under the Securities Act of Nebraska, or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(18) Mark means a word, a name, a symbol, a device, or any combination of a word, name, symbol, or device in any form or arrangement;

(19) Person means a natural person, a corporation, a government, a governmental subdivision or agency, a business trust, an estate, a trust, a partnership, a joint venture, a limited liability company, an unincorporated association, a sole proprietorship, or two or more of any of such persons having a joint or common interest or any other legal or commercial entity;

(20) Pyramid promotional scheme means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation rather than from the sales of goods, services, or intangible property to participants or by participants to others. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or upon payment of anything of value by a person whereby the person obtains any other property in addition to the right to receive consideration, does not change the identity of the scheme as a pyramid promotional scheme;

(21) Referral or chain referral sales or leases means any sales technique, plan, arrangement, or agreement whereby the seller or lessor gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of the buyer or lessee giving to the seller or lessor the names of prospective buyers or lessees or otherwise aiding the seller or lessor in making a sale or lease to another person if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;

(22) Service mark means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(23) Substance means any lookalike substance as defined in section 28-401;

(24) Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used;

(25) Trademark means a word, a name, a symbol, a device, or any combination of a word, name, symbol, or device adopted and used by a person to identify goods made or sold by such person and to distinguish such goods from goods made or sold by others;

(26) Trade name means a word, a name, or any combination of a word or name in any form or arrangement used by a person to identify such person's

business, vocation, or occupation and distinguish such business, vocation, or occupation from the business, vocation, or occupation of others; and

(27) Use or promote the use of, for purposes of subdivision (a)(13) of section 87-302, means contrive, prepare, establish, plan, operate, advertise, or otherwise induce or attempt to induce another person to participate in a pyramid promotional scheme, including a pyramid promotional scheme run through the Internet, email, or other electronic communications.

**Source:** Laws 1969, c. 855, § 1, p. 3221; Laws 1974, LB 327, § 1; Laws 1993, LB 121, § 557; Laws 2002, LB 857, § 6; Laws 2010, LB801, § 1; Laws 2016, LB835, § 24; Laws 2016, LB1009, § 8.

#### Cross References

Securities Act of Nebraska, see section 8-1123.

### **87-302 Deceptive trade practices; enumerated.**

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

- (1) Passes off goods or services as those of another;
- (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
- (6) Represents that goods or services do not have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they have or that a person does not have a sponsorship, approval, status, affiliation, or connection that he or she has;
- (7) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;
- (8) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (9) Disparages the goods, services, or business of another by false or misleading representation of fact;
- (10) Advertises goods or services with intent not to sell them as advertised or advertises the price in any manner calculated or tending to mislead or in any way deceive a person;
- (11) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (12) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(13) Uses or promotes the use of or establishes, operates, or participates in a pyramid promotional scheme in connection with the solicitation of such scheme to members of the public. This subdivision shall not be construed to prohibit a plan or operation, or to define a plan or operation as a pyramid promotional scheme, based on the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services, or intangible property by participants for personal use, consumption, or resale so long as the plan or operation does not promote or induce inventory loading and the plan or operation implements an appropriate inventory repurchase program;

(14) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement;

(15) Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public;

(16) Uses any scheme or device to defraud by means of:

(i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or

(ii) Selling, distributing, supplying, furnishing, or procuring any property for the purpose of furthering such scheme;

(17) Offers an unsolicited check, through the mail or by other means, to promote goods or services if the cashing or depositing of the check obligates the endorser or payee identified on the check to pay for goods or services. This subdivision does not apply to an extension of credit or an offer to lend money;

(18) Mails or causes to be sent an unsolicited billing statement, invoice, or other document that appears to obligate the consumer to make a payment for services or merchandise he or she did not order;

(19)(i) Installs, offers to install, or makes available for installation or download a covered file-sharing program on a computer not owned by such person without providing clear and conspicuous notice to the owner or authorized user of the computer that files on that computer will be made available to the public and without requiring intentional and affirmative activation of the file-sharing function of such covered file-sharing program by the owner or authorized user of the computer; or

(ii) Prevents reasonable efforts to block the installation, execution, or disabling of a covered file-sharing program;

(20) Violates any provision of the Nebraska Foreclosure Protection Act;

(21) In connection with the solicitation of funds or other assets for any charitable purpose, or in connection with any solicitation which represents that funds or assets will be used for any charitable purpose, uses or employs any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, or concealment, suppression, or omission of any material fact; or

(22) In the manufacture, production, importation, distribution, promotion, display for sale, offer for sale, attempt to sell, or sale of a substance:

(i) Makes a deceptive or misleading representation or designation, or omits material information, about a substance or fails to identify the contents of the package or the nature of the substance contained inside the package; or

(ii) Causes confusion or misunderstanding as to the effects a substance causes when ingested, injected, inhaled, or otherwise introduced into the human body.

A person shall be deemed to have committed a violation of the Uniform Deceptive Trade Practices Act for each individually packaged product that is either manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, or sold in violation of this section. A violation under this subdivision shall be treated as a separate and distinct violation from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

(b) In order to prevail in an action under the Uniform Deceptive Trade Practices Act, a complainant need not prove competition between the parties.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

**Source:** Laws 1969, c. 855, § 2, p. 3222; Laws 1974, LB 327, § 2; Laws 1976, LB 820, § 1; Laws 1979, LB 257, § 1; Laws 1988, LB 180, § 1; Laws 1991, LB 408, § 1; Laws 1993, LB 305, § 32; Laws 2003, LB 118, § 1; Laws 2008, LB123, § 29; Laws 2008, LB781, § 1; Laws 2009, LB155, § 18; Laws 2010, LB801, § 2; Laws 2016, LB835, § 25; Laws 2016, LB1009, § 9.

**Cross References**

Nebraska Foreclosure Protection Act, see section 76-2701.

**87-303 Deceptive trade practices; damages; injunction; costs; additional remedy.**

(a) A person likely to be damaged by a deceptive trade practice of another may bring an action for, and the court may grant, an injunction under the principles of equity against the person committing the deceptive trade practice. The court may order such additional equitable relief as it deems necessary to protect the public from further violations, including temporary and permanent injunctive relief. Proof of monetary damage, loss of profits, or intent to deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

(b) Costs shall be allowed to the prevailing party unless the court otherwise directs. The court in its discretion may award attorneys' fees to the prevailing party if (1) the party complaining of a deceptive trade practice has brought an action which he or she knew to be groundless or (2) the party charged with a deceptive trade practice has willfully engaged in the trade practice knowing it to be deceptive.

(c) A claim filed for a violation of the Uniform Deceptive Trade Practices Act shall be proved by a preponderance of the evidence.

(d) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

(e) Subdivision (a)(13) of section 87-302 shall not be construed to authorize a civil action against an interactive computer service, provider of telecommunica-



tions service, or cable operator for the actions of an information content provider.

**Source:** Laws 1969, c. 855, § 3, p. 3223; Laws 2010, LB801, § 3; Laws 2016, LB835, § 26.

## ARTICLE 4 FRANCHISE PRACTICES

### (a) FRANCHISE PRACTICES ACT

Section

87-402. Terms, defined.

87-404. Franchise; termination, cancellation, or failure to renew; notice; when; good cause; noncompete agreement; reform; when; franchisor; duties.

### (a) FRANCHISE PRACTICES ACT

#### **87-402 Terms, defined.**

For purposes of the Franchise Practices Act, unless the context otherwise requires:

(1) Franchise means (a) a written arrangement for a definite or indefinite period, in which a person grants to another person for a franchise fee a license to use a trade name, trademark, service mark, or related characteristics and in which there is a community of interest in the marketing of goods or services at wholesale or retail or by lease, agreement, or otherwise and (b) any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of nonalcoholic beverages at wholesale, retail, or otherwise. Franchise shall not include any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of petroleum products at wholesale, retail, or otherwise;

(2) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(3) Franchisor means a person who grants a franchise to another person;

(4) Franchisee means a person to whom a franchise is offered or granted;

(5) Franchise fee includes any payment made by the franchisee to the franchisor other than a payment for the purchase of goods or services, for a surety bond, for a surety deposit, or for security for payment of debts due;

(6) Sale, transfer, or assignment means any disposition of a franchise or any interest therein, with or without consideration, which shall include, but not be limited to, bequest, inheritance, gift, exchange, lease, or license;

(7) Place of business means a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services. Place of business shall not mean an office, a warehouse, a place of storage, a residence, or a vehicle;

(8) Good cause for terminating, canceling, or failure to renew a franchise is limited to failure by the franchisee to substantially comply with the requirements imposed upon him or her by the franchise; and

(9) Noncompete agreement means any agreement between a franchisor and a franchisee, a guarantor, or any person with a direct or indirect beneficial interest in the franchise that restricts the business activities in which such persons may engage during or after the term of the franchise. Noncompete

agreement includes any stand-alone agreement or any covenant not to compete provision within a franchise agreement or ancillary agreement.

**Source:** Laws 1978, LB 202, § 2; Laws 1989, LB 371, § 24; Laws 1993, LB 121, § 559; Laws 2016, LB942, § 2.

**87-404 Franchise; termination, cancellation, or failure to renew; notice; when; good cause; noncompete agreement; reform; when; franchisor; duties.**

(1) It shall be a violation of the Franchise Practices Act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew, except (a) when the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the written notice may be given fifteen days in advance of such termination, cancellation, or failure to renew; and (b) when the alleged grounds are (i) the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, (ii) insolvency, the institution of bankruptcy or receivership proceedings, (iii) default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor, (iv) falsification of records or reports required by the franchisor, (v) the existence of an imminent danger to public health or safety, or (vi) loss of the right to occupy the premises from which the franchise is operated by either the franchisee or the franchisor, in which event such termination, cancellation, or failure to renew may be effective immediately upon the delivery and receipt of written notice of the same. It shall be a violation of the Franchise Practices Act for a franchisor to terminate, cancel, or fail to renew a franchise without good cause. This subsection shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions.

(2) If restrictions in a noncompete agreement are found by an arbitrator or a court to be unreasonable in restraining competition, the arbitrator or court shall reform the terms of the noncompete agreement to the extent necessary to cause the restrictions contained therein to be reasonable and enforceable. The arbitrator or court shall then enforce the noncompete agreement against the franchisee, the guarantor, or any person with a direct or indirect beneficial interest in the franchise in accordance with the reformed terms of the noncompete agreement. The arbitrator or court may reform and enforce the restrictions in a noncompete agreement as part of an order for preliminary or temporary relief. Notwithstanding section 87-403, this subsection also applies to any noncompete agreement entered into by a franchisor headquartered in the State of Nebraska, unless otherwise agreed to by the franchisor and franchisee. This subsection applies to any noncompete agreement entered into before, on, or after April 8, 2016.

(3) If a franchisor is also a seller of a seller-assisted marketing plan as defined in section 59-1705 and has previously filed a disclosure document pursuant to section 59-1724 with the Department of Banking and Finance, and such franchisor subsequently executes a noncompete agreement in a stand-alone or ancillary agreement with a franchisee, a disclosure of such stand-alone

or ancillary agreement shall be included with the annual updated disclosure document required to be filed under section 59-1724.

**Source:** Laws 1978, LB 202, § 4; Laws 2016, LB942, § 3; Laws 2018, LB742, § 1.

Effective date April 12, 2018.

## ARTICLE 8

### FINANCIAL DATA PROTECTION AND CONSUMER NOTIFICATION OF DATA SECURITY BREACH ACT OF 2006

#### Section

87-801. Act, how cited.

87-802. Terms, defined.

87-803. Breach of security; investigation; notice to resident; notice to Attorney General.

87-804. Compliance with notice requirements; manner.

87-806. Attorney General; powers; violation; how treated.

87-808. Security procedures and practices; disclosure of computerized data; contract provisions; compliance.

#### **87-801 Act, how cited.**

Sections 87-801 to 87-808 shall be known and may be cited as the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006.

**Source:** Laws 2006, LB 876, § 1; Laws 2018, LB757, § 6.

Effective date July 19, 2018.

#### **87-802 Terms, defined.**

For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006:

(1) Breach of the security of the system means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by an individual or a commercial entity. Good faith acquisition of personal information by an employee or agent of an individual or a commercial entity for the purposes of the individual or the commercial entity is not a breach of the security of the system if the personal information is not used or subject to further unauthorized disclosure. Acquisition of personal information pursuant to a search warrant, subpoena, or other court order or pursuant to a subpoena or order of a state agency is not a breach of the security of the system;

(2) Commercial entity includes a corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, organization, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal entity, whether for profit or not for profit;

(3) Encrypted means converted by use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without use of a confidential process or key. Data shall not be considered encrypted if the confidential process or key was or is reasonably believed to have been acquired as a result of the breach of the security of the system;

(4) Notice means:

(a) Written notice;

(b) Telephonic notice;

(c) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001, as such section existed on January 1, 2006;

(d) Substitute notice, if the individual or commercial entity required to provide notice demonstrates that the cost of providing notice will exceed seventy-five thousand dollars, that the affected class of Nebraska residents to be notified exceeds one hundred thousand residents, or that the individual or commercial entity does not have sufficient contact information to provide notice. Substitute notice under this subdivision requires all of the following:

(i) Electronic mail notice if the individual or commercial entity has electronic mail addresses for the members of the affected class of Nebraska residents;

(ii) Conspicuous posting of the notice on the web site of the individual or commercial entity if the individual or commercial entity maintains a web site; and

(iii) Notice to major statewide media outlets; or

(e) Substitute notice, if the individual or commercial entity required to provide notice has ten employees or fewer and demonstrates that the cost of providing notice will exceed ten thousand dollars. Substitute notice under this subdivision requires all of the following:

(i) Electronic mail notice if the individual or commercial entity has electronic mail addresses for the members of the affected class of Nebraska residents;

(ii) Notification by a paid advertisement in a local newspaper that is distributed in the geographic area in which the individual or commercial entity is located, which advertisement shall be of sufficient size that it covers at least one-quarter of a page in the newspaper and shall be published in the newspaper at least once a week for three consecutive weeks;

(iii) Conspicuous posting of the notice on the web site of the individual or commercial entity if the individual or commercial entity maintains a web site; and

(iv) Notification to major media outlets in the geographic area in which the individual or commercial entity is located;

(5) Personal information means either of the following:

(a) A Nebraska resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident if either the name or the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable:

(i) Social security number;

(ii) Motor vehicle operator's license number or state identification card number;

(iii) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;

(iv) Unique electronic identification number or routing code, in combination with any required security code, access code, or password; or

(v) Unique biometric data, such as a fingerprint, voice print, or retina or iris image, or other unique physical representation; or

(b) A user name or email address, in combination with a password or security question and answer, that would permit access to an online account.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records; and

(6) Redact means to alter or truncate data such that no more than the last four digits of a social security number, motor vehicle operator's license number, state identification card number, or account number is accessible as part of the personal information.

**Source:** Laws 2006, LB 876, § 2; Laws 2016, LB835, § 27.

**87-803 Breach of security; investigation; notice to resident; notice to Attorney General.**

(1) An individual or a commercial entity that conducts business in Nebraska and that owns or licenses computerized data that includes personal information about a resident of Nebraska shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be used for an unauthorized purpose. If the investigation determines that the use of information about a Nebraska resident for an unauthorized purpose has occurred or is reasonably likely to occur, the individual or commercial entity shall give notice to the affected Nebraska resident. Notice shall be made as soon as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(2) If notice of a breach of security of the system is required by subsection (1) of this section, the individual or commercial entity shall also, not later than the time when notice is provided to the Nebraska resident, provide notice of the breach of security of the system to the Attorney General.

(3) An individual or a commercial entity that maintains computerized data that includes personal information that the individual or commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system when it becomes aware of a breach if use of personal information about a Nebraska resident for an unauthorized purpose occurred or is reasonably likely to occur. Cooperation includes, but is not limited to, sharing with the owner or licensee information relevant to the breach, not including information proprietary to the individual or commercial entity.

(4) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice shall be made in good faith, without unreasonable delay, and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

**Source:** Laws 2006, LB 876, § 3; Laws 2016, LB835, § 28.

**87-804 Compliance with notice requirements; manner.**

(1) An individual or a commercial entity that maintains its own notice procedures which are part of an information security policy for the treatment of personal information and which are otherwise consistent with the timing requirements of section 87-803, is deemed to be in compliance with the notice requirements of section 87-803 if the individual or the commercial entity notifies affected Nebraska residents and the Attorney General in accordance with its notice procedures in the event of a breach of the security of the system.

(2) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with section 87-803 if the individual or commercial entity notifies affected Nebraska residents and the Attorney General in accordance with the maintained procedures in the event of a breach of the security of the system.

**Source:** Laws 2006, LB 876, § 4; Laws 2016, LB835, § 29.

#### **87-806 Attorney General; powers; violation; how treated.**

(1) For purposes of the Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006, the Attorney General may issue subpoenas and seek and recover direct economic damages for each affected Nebraska resident injured by a violation of section 87-803.

(2) A violation of section 87-808 shall be considered a violation of section 59-1602 and be subject to the Consumer Protection Act and any other law which provides for the implementation and enforcement of section 59-1602. A violation of section 87-808 does not give rise to a private cause of action.

**Source:** Laws 2006, LB 876, § 6; Laws 2018, LB757, § 8.  
Effective date July 19, 2018.

#### **Cross References**

**Consumer Protection Act**, see section 59-1623.

#### **87-808 Security procedures and practices; disclosure of computerized data; contract provisions; compliance.**

(1) To protect personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure, an individual or a commercial entity that conducts business in Nebraska and owns, licenses, or maintains computerized data that includes personal information about a resident of Nebraska shall implement and maintain reasonable security procedures and practices that are appropriate to the nature and sensitivity of the personal information owned, licensed, or maintained and the nature and size of, and the resources available to, the business and its operations, including safeguards that protect the personal information when the individual or commercial entity disposes of the personal information.

(2)(a) An individual or commercial entity that discloses computerized data that includes personal information about a Nebraska resident to a nonaffiliated, third-party service provider shall require by contract that the service provider implement and maintain reasonable security procedures and practices that:

(i) Are appropriate to the nature of the personal information disclosed to the service provider; and

(ii) Are reasonably designed to help protect the personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure.

(b) This subsection does not apply to any contract entered into before July 19, 2018. Any such contract renewed on or after July 19, 2018, shall comply with the requirements of this subsection.

(3) An individual or a commercial entity complies with subsections (1) and (2) of this section if the individual or commercial entity:

(a) Complies with a state or federal law that provides greater protection to personal information than the protections that this section provides; or

(b) Complies with the regulations promulgated under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., or the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-9, as such acts and sections existed on January 1, 2018, if the individual or commercial entity is subject to either or both of such acts or sections.

**Source:** Laws 2018, LB757, § 7.

Effective date July 19, 2018.





## CHAPTER 88

### WAREHOUSES

Article.

5. Grain Warehouses. 88-530.

#### ARTICLE 5

#### GRAIN WAREHOUSES

Section

88-530. Financial requirements; security; requirements; liability of surety.

**88-530 Financial requirements; security; requirements; liability of surety.**

Each applicant shall show sufficient net worth or stockholders' equity to conform with the financial requirements which the commission shall establish by the adoption and promulgation of rules and regulations. Applicants shall file with the commission security in the form of a bond, a certificate of deposit, an irrevocable letter of credit, United States bonds or treasury notes, or other public debt obligations of the United States which are unconditionally guaranteed as to both principal and interest by the United States in such sum as the commission may require and in the form and of the kind prescribed by the commission. The security shall be in an amount set by the commission pursuant to rules and regulations, but shall not be less than twenty-five thousand dollars. The security shall run to the State of Nebraska for the benefit of each person who stores grain in such warehouse and of each person who, not more than five business days prior to the cutoff date of operation of the warehouse, owned and sold grain stored in the warehouse and had not received payment from the warehouse licensee for such grain, but shall not include grain sold by signed contract or priced scale ticket. The cutoff date of operation of the warehouse shall be the date the commission officially closes the warehouse. The security shall be conditioned upon (1) the warehouse licensee carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in such warehouse, (2) the delivery of the grain upon surrender of the warehouse receipt, and (3) the faithful performance by the warehouse licensee of all provisions of law relating to the storage of grain by such warehouse licensee and rules and regulations adopted and promulgated by the commission. The commission may require increases in the amount of the security from time to time as it may deem necessary for the protection of the storers. For an applicant who has filed a reviewed fiscal year-end financial statement pursuant to section 88-528, the commission shall require additional security in an amount set by the commission pursuant to rules and regulations, which shall not be less than twenty-five thousand dollars and not more than five hundred thousand dollars. The surety on a bond shall be a surety company licensed by the Department of Insurance. An irrevocable letter of credit or certificate of deposit shall be issued by a federally insured depository institution.

The security shall particularly describe the warehouse intended to be covered by the security. The liability of the surety on a bond shall not accumulate for each successive license period which the bond covers. The liability of the surety

shall be limited to the amount stated on the bond or on an appropriate rider or endorsement to the bond.

**Source:** Laws 1987, LB 164, § 6; Laws 1989, LB 78, § 29; Laws 2003, LB 735, § 12; Laws 2016, LB730, § 1.

## CHAPTER 89

### WEIGHTS AND MEASURES

Article.

1. General Provisions.

(b) Weights and Measures Act. 89-187 to 89-1,100.

#### ARTICLE 1

#### GENERAL PROVISIONS

#### (b) WEIGHTS AND MEASURES ACT

Section

89-187. Director of Agriculture; duties; fees; administrative fees.

89-187.02. Permit; application; fee.

89-188. Director; powers.

89-197. Unlawful acts.

89-1,100. Weights and Measures Administrative Fund; created; use; investment; lien.

#### (b) WEIGHTS AND MEASURES ACT

#### **89-187 Director of Agriculture; duties; fees; administrative fees.**

The director shall:

(1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;

(2) Enforce the provisions of the Weights and Measures Act;

(3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:

(a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:

(i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;

(ii)(A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and

(iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;

(b) Additional standards not specifically provided for in the act;

(c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;

(d) Requirements for the suitable use of commercial weighing and measuring devices; and

(e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit information for any commodity;

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of sections 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have been rejected may be seized if not made correct within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented

and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (a) The accuracy of prices, quantity, and computations; (b) the correct use of the equipment; and (c) if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of prices and quantity printed or recalled from a data base;

(18) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees which are due and that the fees are due on August 1 and shall be delinquent after such date;

(19) Require all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02;

(20) Require all persons who operate a weighing and measuring establishment to, on or before August 1 of each year:

(a) Register each commercial weighing and measuring device with the department upon forms furnished by the director;

(b) Pay to the department a registration fee of four dollars; and

(c) Pay to the department a device inspection fee.

(i) The device inspection fee due August 1, 2003, shall be the amount in column A of subdivision (20)(c)(iii) of this section.

(ii) The device inspection fee due August 1, 2004, and each August 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower the device inspection fees each year to meet the criteria in this subdivision, but the fee shall not be greater than the amount in column B of subdivision (20)(c)(iii) of this section. The same percentage shall be applied to each device category for all device inspection fee increases or decreases. The director shall use the device inspection fees set for the fees due August 1, 2003, as a base for future fee increases or decreases. The director

shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(A) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Weights and Measures Act; and

(B) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(iii)

Scales:	A	B
Up through 35 pounds capacity	7.96	14.34
Multiunit Scales	51.00	80.37
Over 35 through 1,000 pounds capacity	15.13	25.35
Over 1,000 through 4,000 pounds capacity	31.87	51.03
Over 4,000 through 50,000 pounds capacity	36.65	58.36
Over 50,000 through 150,000 pounds capacity	39.04	62.03
Over 150,000 pounds capacity	86.87	135.40
Length Measuring Devices:		
Cordage or fabric	16.56	27.55
Pumps:		
Service Station Dispensers—per measuring element	5.09	9.94
High-capacity service station dispensers over 20 gallons per minute—per dispensing element	17.52	29.02
Compressed natural gas—per dispensing element	91.65	142.74
Meters:		
Vehicle tank meters	14.17	23.88
Loading rack meters	31.87	51.03
Liquid petroleum gas meters	40.00	63.50
Liquid fertilizer and herbicide meters	36.65	58.36
Liquid feed meters	36.65	58.36
Cryogenic	53.39	84.04
Mass Flow Metering Systems:		
Mass flow meters (all liquid) and	78.26	122.19;

(21) Require persons delinquent under subdivision (20) of this section to pay an administrative fee of twenty-five percent of the annual fees due for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such administrative fees paid shall be in addition to the annual fees due. The purpose of the additional administrative fee 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 Weights and Measures Administrative Fund.

**Source:** Laws 1972, LB 1413, § 5; Laws 1974, LB 17, § 1; Laws 1979, LB 540, § 1; Laws 1980, LB 633, § 7; Laws 1983, LB 617, § 30; Laws 1984, LB 977, § 1; Laws 1985, LB 460, § 23; Laws 1991, LB 356, § 11; Laws 1992, LB 366, § 68; Laws 1993, LB 370, § 492; Laws 1993, LB 267, § 29; Laws 1999, LB 473, § 4; Laws 2001, LB 541, § 8; Laws 2003, LB 161, § 4; Laws 2005, LB 274, § 284; Laws 2016, LB909, § 13.

**89-187.02 Permit; application; fee.**

Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars and the annual device registration and inspection fees required in section 89-187. The full annual device registration and inspection fees are required regardless of when during the year the device is put into operation.

**Source:** Laws 1991, LB 356, § 13; Laws 1993, LB 121, § 566; Laws 1997, LB 752, § 233; Laws 1999, LB 473, § 5; Laws 2003, LB 161, § 5; Laws 2016, LB909, § 14.

#### **89-188 Director; powers.**

When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

(1) Enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, the director shall first present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;

(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) Charge and collect all fees prescribed by the act and the rules or regulations;

(6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

(7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act;

(8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under the National Conference on Weights and Measures, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

**Source:** Laws 1972, LB 1413, § 6; Laws 1991, LB 356, § 20; Laws 1999, LB 473, § 9; Laws 2003, LB 161, § 6; Laws 2016, LB909, § 15.

### **89-197 Unlawful acts.**

It shall be unlawful for any person to:

(1) Use in commerce any weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weighing and measuring device or commodity without specific written authorization from the department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(5) Maintain or have in his or her possession any commercial weighing and measuring device that has not been registered and inspected in accordance with the provisions of the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

(8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;

(9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;

(10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;



(11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 89-186.01;

(12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 89-186.01;

(13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;

(14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;

(15) Misrepresent the quantity of any commodity kept for sale or sold or represent the quantity in any manner calculated or tending to mislead or in any way deceive a person;

(16) Fail to pay all fees as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

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

(18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

**Source:** Laws 1972, LB 1413, § 15; Laws 1991, LB 356, § 27; Laws 1993, LB 267, § 30; Laws 2016, LB909, § 16.

**89-1,100 Weights and Measures Administrative Fund; created; use; investment; lien.**

The director shall collect registration, permit, laboratory, test, administrative, and inspection fees and money required to be reimbursed as provided for in the Weights and Measures Act and shall remit such funds to the State Treasurer. The State Treasurer shall credit such funds to the Weights and Measures Administrative Fund, which fund is hereby created. All fees and reimbursements collected pursuant to the act and credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any unexpended balance in the Weights and Measures Administrative Fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding 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. The registration, permit, laboratory, test, administrative, and inspection fees and money required to be reimbursed as provided for in the Weights and Measures Act shall constitute a lien on the weighing and measuring devices or standards required to be registered or approved for use in this state until such fees and reimbursements are paid. The director may sue for such fees and reimbursements and may seek to foreclose on any lien in the name of the state. The county attorney of the county in which the device is located or the Attorney General's office

shall, upon the request of the director, take appropriate action to establish and foreclose on any such lien.

**Source:** Laws 1972, LB 1413, § 18; Laws 1974, LB 17, § 2; Laws 1986, LB 258, § 45; Laws 1991, LB 356, § 30; Laws 1994, LB 1066, § 142; Laws 2001, LB 541, § 9; Laws 2003, LB 161, § 7; Laws 2009, First Spec. Sess., LB3, § 101; Laws 2016, LB909, § 17.

**Cross References**

**Nebraska Capital Expansion Act**, see section 72-1269.

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

## CHAPTER 90 SPECIAL ACTS

Article.

2. Specific Conveyances. 90-202 to 90-260.
5. Appropriations. 90-542 to 90-561.

### ARTICLE 2 SPECIFIC CONVEYANCES

Section

- 90-202. Norfolk Regional Center; Director of Administrative Services; duties; report.  
 90-203. Conveyance to Northeast Community College Area; donation of land.  
 90-238. Department of Transportation; acquire described property.  
 90-244. Repealed. Laws 2016, LB978, § 5.  
 90-260. Game and Parks Commission; convey described property.

**90-202 Norfolk Regional Center; Director of Administrative Services; duties; report.**

Notwithstanding sections 72-811 to 72-818 or any other provision of law, the Director of Administrative Services shall cause a survey of the property which comprises the Norfolk Regional Center to be done and, in consultation with the Department of Health and Human Services, shall determine what portion is not needed for state purposes. Pursuant to such survey and determination, the Director of Administrative Services shall submit a report to the Legislature and the Governor and request authorization to give the Northeast Community College Area the right of first refusal to purchase the portion of property not needed for state purposes at its appraised value as determined under subsection (3) of section 72-815 for the purpose of development of the Northeast Community College Technology Park. The report submitted to the Legislature shall be submitted electronically. Approval of the Governor and the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council shall be required to give such right of first refusal to the Northeast Community College Area.

**Source:** Laws 2015, LB56, § 1.

**90-203 Conveyance to Northeast Community College Area; donation of land.**

(1) For purposes of this section, qualified property means the 43.55 acres that were deemed to be not needed for state purposes pursuant to section 90-202 and were deemed to be excess land by the Vacant Building and Excess Land Committee.

(2) Notwithstanding sections 72-811 to 72-818 or any other provision of law, the Director of Administrative Services shall, within thirty days after April 28, 2017, submit a request to the Legislature and the Governor asking for authorization to convey the qualified property to the Northeast Community College Area as a donation so that the qualified property may be used for the purpose of development of the Northeast Community College Technology Park.

(3) Approval of the Governor and the Legislature or, if the Legislature is not in session, the Executive Board of the Legislative Council shall be required to donate the qualified property to the Northeast Community College Area.

(4) If the Northeast Community College Area sells the qualified property within ten years after it is donated pursuant to this section, all proceeds of the sale shall be remitted to the State Treasurer for credit to the General Fund.

**Source:** Laws 2017, LB376, § 1.

**90-238 Department of Transportation; acquire described property.**

The Department of Transportation is authorized to acquire from the Chicago and North Western Transportation Company its abandoned right-of-way described as follows: All of Chicago and North Western Transportation Company abandoned right-of-way in section 34, township 15 north, range 7 east, Saunders County, Nebraska. The department is also authorized to acquire all rights, interests, and titles related to such abandoned right-of-way.

**Source:** Laws 1984, LB 853, § 1; Laws 2017, LB339, § 297.

**90-244 Repealed. Laws 2016, LB978, § 5.**

**90-260 Game and Parks Commission; convey described property.**

The Game and Parks Commission is authorized and directed to convey to the Department of Transportation the following described real estate situated in the county of Dawson, in the State of Nebraska, to wit: A tract of land located in the northeast quarter of section 20, township 9 north, range 21 west of the 6th principal meridian, Dawson County, Nebraska, described as follows: Beginning at the northeast corner of section 20; thence westerly on the north line of the northeast quarter of section 20 a distance of 2,360.8 feet; thence southeasterly 133 degrees, 47 minutes left a distance of 34.3 feet; thence continuing southeasterly 21 degrees, 49 minutes left a distance of 107.5 feet; thence continuing southeasterly 21 degrees, 49 minutes right a distance of 734.9 feet to point of curvature; thence continuing southeasterly on a 718.5-foot radius curve to the left (initial tangent of which coincides with the last-described course) a distance of 331.3 feet to point of tangency; thence continuing southeasterly tangent, a distance of 787.3 feet; thence continuing southeasterly 2 degrees, 11 minutes left a distance of 686.6 feet to a point on the east line of the northeast quarter; thence northerly on the east line a distance of 1,256.9 feet to the point of beginning, containing 39.04 acres, more or less.

**Source:** Laws 1991, LB 500, § 1; Laws 2017, LB339, § 298.

**ARTICLE 5**

**APPROPRIATIONS**

Section

- 90-542. Transfer to Water Resources Cash Fund.
- 90-543. Transfer to Water Resources Cash Fund.
- 90-544. Transfer to Water Sustainability Fund.
- 90-545. Transfer to Water Sustainability Fund.
- 90-546. Transfer to Nebraska Resources Development Fund.
- 90-547. Transfer to Nebraska Resources Development Fund.
- 90-548. Transfer to Property Tax Credit Cash Fund.
- 90-549. Transfer to Property Tax Credit Cash Fund.
- 90-550. Transfer to Nebraska Cultural Preservation Endowment Fund.

Section

- 90-551. Transfer to Nebraska Cultural Preservation Endowment Fund.
- 90-552. Transfer to General Fund.
- 90-553. Transfer to General Fund.
- 90-554. Transfer to General Fund.
- 90-555. Transfer to State Park Cash Revolving Fund.
- 90-556. Transfer to General Fund.
- 90-557. Transfer to General Fund.
- 90-558. Republican River Compact Litigation Contingency Cash Fund; created; use; investment.
- 90-559. Department of Correctional Services; Operations.
- 90-560. Transfer to Site and Building Development Fund.
- 90-561. State Department of Education.

**90-542 Transfer to Water Resources Cash Fund.**

The State Treasurer shall transfer \$3,300,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2016, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 1.

**90-543 Transfer to Water Resources Cash Fund.**

The State Treasurer shall transfer \$3,300,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2017, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 2.

**90-544 Transfer to Water Sustainability Fund.**

The State Treasurer shall transfer \$11,000,000 from the General Fund to the Water Sustainability Fund on or before June 30, 2016, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 3.

**90-545 Transfer to Water Sustainability Fund.**

The State Treasurer shall transfer \$11,000,000 from the General Fund to the Water Sustainability Fund on or before June 30, 2017, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 4.

**90-546 Transfer to Nebraska Resources Development Fund.**

The State Treasurer shall transfer \$3,000,000 from the Water Sustainability Fund to the Nebraska Resources Development Fund on or before August 1, 2015.

**Source:** Laws 2015, LB661, § 5.

**90-547 Transfer to Nebraska Resources Development Fund.**

The State Treasurer shall transfer \$3,000,000 from the Water Sustainability Fund to the Nebraska Resources Development Fund on or before August 1, 2016.

**Source:** Laws 2015, LB661, § 6.

**90-548 Transfer to Property Tax Credit Cash Fund.**

The State Treasurer shall transfer \$202,000,000 from the General Fund to the Property Tax Credit Cash Fund on or before December 15, 2015, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 7.

**90-549 Transfer to Property Tax Credit Cash Fund.**

The State Treasurer shall transfer \$202,000,000 from the General Fund to the Property Tax Credit Cash Fund on or before December 15, 2016, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

**Source:** Laws 2015, LB661, § 8.

**90-550 Transfer to Nebraska Cultural Preservation Endowment Fund.**

The State Treasurer shall transfer an amount as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subsections (3) and (4) of section 82-331, not to exceed \$750,000, from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2015, or as soon thereafter as administratively possible.

**Source:** Laws 2015, LB661, § 9.

**90-551 Transfer to Nebraska Cultural Preservation Endowment Fund.**

The State Treasurer shall transfer an amount as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to subsections (3) and (4) of section 82-331, not to exceed \$750,000, from the General Fund to the Nebraska Cultural Preservation Endowment Fund on December 31, 2016, or as soon thereafter as administratively possible.

**Source:** Laws 2015, LB661, § 10.

**90-552 Transfer to General Fund.**

The State Treasurer shall transfer \$147,000 from the City of the Metropolitan Class Development Fund to the General Fund on July 1, 2015, or as soon thereafter as administratively possible.

**Source:** Laws 2015, LB661, § 11.

**90-553 Transfer to General Fund.**

The State Treasurer shall transfer \$98,000 from the City of the Primary Class Development Fund to the General Fund on July 1, 2015, or as soon thereafter as administratively possible.

**Source:** Laws 2015, LB661, § 12.

**90-554 Transfer to General Fund.**

The State Treasurer shall transfer \$150,000 from the Convention Center Support Fund to the General Fund on July 1, 2015, or as soon thereafter as administratively possible.

**Source:** Laws 2015, LB661, § 13.

**90-555 Transfer to State Park Cash Revolving Fund.**

The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer \$1,000,000 from the State Recreation Road Fund to the State Park Cash Revolving Fund between July 1, 2015, and July 31, 2015. The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer \$1,000,000 from the State Recreation Road Fund to the State Park Cash Revolving Fund between July 1, 2016, and July 31, 2016.

**Source:** Laws 2015, LB661, § 14.

**90-556 Transfer to General Fund.**

The State Treasurer shall transfer \$200,000 from the Resource Recovery Fund to the General Fund on or before July 5, 2015.

**Source:** Laws 2015, LB661, § 15.

**90-557 Transfer to General Fund.**

The State Treasurer shall transfer \$200,000 from the Nebraska Collection Agency Fund to the General Fund on or before July 5, 2015.

**Source:** Laws 2015, LB661, § 16.

**90-558 Republican River Compact Litigation Contingency Cash Fund; created; use; investment.**

The Republican River Compact Litigation Contingency Cash Fund is created. The Director of Administrative Services shall use the fund to make payments in an amount up to \$5,500,000 in accordance with any court order pursuant to *Kansas v. Nebraska*, No. 126 Original. Such payment or payments shall only be made by the Department of Administrative Services upon written certification by the Attorney General of the amount necessary to satisfy the court-ordered amount. The fund shall receive revenue from fund transfers as authorized by the Legislature and from fees, charges, and any other revenue source specifically designated by the Legislature for deposit in the fund. Further, upon the written certification of the Attorney General to the Director of Administrative Services that the State of Nebraska has satisfied in full its payment requirements ordered by the court pursuant to *Kansas v. Nebraska*, No. 126 Original, the fund shall be terminated and any remaining balance shall be transferred to the Cash Reserve Fund. Any money in the Republican River Compact Litigation Contingency 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 2015, LB661, § 17.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**90-559 Department of Correctional Services; Operations.**

AGENCY NO. 46 — DEPARTMENT OF CORRECTIONAL SERVICES

Program No. 200 - Operations

	FY2015-16	FY2016-17
GENERAL FUND	204,563,182	202,442,037
CASH FUND	2,126,000	2,126,000
FEDERAL FUND est.	1,758,021	1,762,858
REVOLVING FUND est.	18,780,835	18,935,977
PROGRAM TOTAL	227,228,038	225,266,872
SALARY LIMIT	107,394,527	105,496,351

The unexpended General Fund appropriation balance existing on June 30, 2015, is hereby reappropriated.

Included in the salary limitations provided by this section is \$3,672,087 for FY2015-16 and \$3,672,087 for FY2016-17 for Revolving Fund salaries for program classifications 390 and 563, that shall not be limited to the amounts shown.

The Department of Administrative Services shall monitor the appropriations and expenditures for this program according to the following program classifications:

- No. 260 - Nebraska Correctional Youth Facility
- No. 300 - Tecumseh Correctional Center
- No. 368 - Lincoln Community Corrections Center
- No. 369 - Omaha Community Corrections Center
- No. 370 - Central Office
- No. 372 - Nebraska State Penitentiary
- No. 373 - Nebraska Center for Women - York
- No. 375 - Diagnostic and Evaluation Center
- No. 376 - Lincoln Correctional Center
- No. 377 - Omaha Correctional Center
- No. 386 - McCook Incarceration Work Camp
- No. 389 - Adult Parole Administration
- No. 390 - Federal Surplus Property
- No. 495 - Department Central Warehouse
- No. 563 - Correctional Industries

Revolving Fund expenditures shall not be limited to the amounts shown.

It is the intent of the Legislature that the Department of Correctional Services investigate the feasibility of leasing the former Lancaster County jail facility located in Air Park and owned by the Airport Authority of the City of Lincoln, Nebraska, and consider making this facility a community corrections facility instead of a minimum-security facility. The department shall issue a report to the Appropriations Committee of the Legislature electronically on this subject by January 1, 2016.



It is the intent of the Legislature that the Department of Correctional Services reduce mandatory overtime at the department's facilities. The department shall examine reducing mandatory overtime by studying its pay structure, including, but not limited to, adopting a pay structure that allows employees to advance through the pay line, adopting a step plan or a similar-type plan, or by adopting another method that gives incentives for employees to remain employed by the department. The department may conduct a salary survey to see if the department's salaries are competitive with other entities which it competes with for employees. The department shall issue a report to the Appropriations Committee of the Legislature electronically on this subject by January 1, 2016.

It is the intent of the Legislature that the Department of Correctional Services implement a needs assessment regarding behavioral and mental health treatment and staffing. The needs assessment shall be completed by appropriately trained mental health professionals. The assessment shall include:

- (1) Review and summary of relevant existing data sources;
- (2) A detailed review of need factors in the Department of Correctional Services population including risk behaviors, mental health needs, behavioral health needs, and diagnosis;
- (3) A detailed review of existing treatment and analysis of the adequacy of that treatment based on:
  - (a) Professional standards of care;
  - (b) Best practices;
  - (c) Availability of programming aligned with mental health needs and diagnosis (using valid instrumentation); and
  - (d) Availability in different facilities and levels of custody; and
- (4) Analysis of needs, based on data gathered regarding:
  - (a) Staffing needs to meet professional standards of care;
  - (b) Needs related to developing new or different treatment based on needs analysis; and
  - (c) Needs related to achieving an appropriate level of service that meets the goals of institutional and community safety and community integration.

The department shall issue a report to the Appropriations Committee of the Legislature electronically on this subject by January 1, 2016.

There is included in the appropriation to this program for FY2015-16 \$5,479,892 General Funds, which shall only be used to contract with county jail facilities to house Department of Correctional Services facilities inmates on a temporary basis. There is included in the appropriation to this program for FY2016-17 \$4,607,147 General Funds, which shall only be used to contract with county jail facilities to house Department of Correctional Services facilities inmates on a temporary basis. It is the intent of the Legislature that no further funding be provided after FY2016-17 to contract with county jail facilities to house Department of Correctional Services facilities inmates.

It is intended that the Department of Correctional Services shall maintain a Department Contingency Fund and a Department Equipment Fund.

There is included in the appropriation to this program for FY2015-16 \$1,500,000 General Funds, which shall only be used for strategies to retain quality staff in workforce shortage areas at institutions operated by the department. At least \$150,000 of this appropriation shall be used in the retention of

staff within the Division of Health Services. The department shall provide quarterly reports to the Governor and the Legislature regarding use of the appropriation that include how the funds are being utilized, the impact of the use of the funds on retention of quality staff, staff vacancy and turnover data, and plans for the future use of the funds. The second quarterly report shall include a plan by the department for the use of a similar appropriation in future fiscal years. The reports submitted to the Legislature shall be submitted electronically.

It is the intent of the Legislature that if the Department of Correctional Services has behavioral and mental health treatment staff positions that are vacant for ninety days that the department use these funds to contract with private providers so that inmates are able to promptly receive behavioral and mental health treatment.

It is the intent of the Legislature that the Department of Correctional Services examine prison bed housing options for use before the Community Corrections Center Lincoln beds become available in FY2018-19. Such options may include modular housing and other immediate housing options to increase prison bed space in the immediate future. Additionally, the Department of Correctional Services shall examine such immediate housing options by the geographical areas of Omaha, Lincoln, and areas outside Omaha and Lincoln.

The unexpended General Fund appropriation balance existing on June 30, 2016, less certified encumbrances, in Program 389 - Adult Parole Administration, is hereby reappropriated to Agency No. 15 — Board of Pardons and Board of Parole, Program 358 - Board of Parole.

**Source:** Laws 2015, LB598A, § 1; Laws 2015, LB605A, § 1; Laws 2015, LB657, § 162; Laws 2016, LB956, § 72.

**90-560 Transfer to Site and Building Development Fund.**

The State Treasurer shall transfer four million dollars from the General Fund to the Site and Building Development Fund on or before June 30, 2016.

**Source:** Laws 2016, LB957, § 22.

**90-561 State Department of Education.**

AGENCY NO. 13 — STATE DEPARTMENT OF EDUCATION

Program No. 25 - Education, Administration, and Support

	FY2017-18	FY2018-19
GENERAL FUND	15,533,504	15,631,973
CASH FUND	1,532,782	1,540,973
FEDERAL FUND est.	23,820,543	23,987,576
REVOLVING FUND	204,728	204,728
PROGRAM TOTAL	41,091,557	41,365,250
SALARY LIMIT	14,412,915	14,521,868

The Department of Administrative Services shall monitor the appropriations and expenditures for this program according to the following program classifications:

No. 25 - Commissioner’s Office

No. 403 - Assessment/Report Card

- No. 440 - Human Resources
- No. 441 - Teaching and Learning
- No. 442 - Communications
- No. 443 - Network Education and Technology Services
- No. 444 - Office of Early Childhood
- No. 445 - Data, Research, Evaluation, and Information Technology
- No. 446 - Adult Program Services
- No. 447 - School Improvement/Accreditation
- No. 448 - Diversity Populations: Special Education
- No. 449 - Federal Programs
- No. 450 - Select Department-wide Costs
- No. 451 - Finance and Organization Services

There is included in the appropriation to this program for FY2017-18 \$4,751,600 General Funds for statewide assessment and reporting, which shall only be used for such purpose. There is included in the appropriation to this program for FY2018-19 \$4,751,600 General Funds for statewide assessment and reporting, which shall only be used for such purpose.

There is included in the appropriation to this program for FY2017-18 \$75,000 General Funds for the review of poverty and limited English proficiency plans, including at least \$25,000 General Funds for performance auditing.

There is included in the appropriation to this program for FY2017-18 \$10,000 General Funds and FY2018-19 \$10,000 General Funds for the Educational Opportunity for Military Children Program.

There is included in the appropriation to this program for FY2017-18 \$225,000 Federal Funds and for FY2018-19 \$225,000 Federal Funds for the Nebraska Career Connections contract.

**Source:** Laws 2018, LB944, § 42; Laws 2018, LB1081A, § 1.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB944, section 42, with LB1081A, section 1, to reflect all amendments.

**Note:** Changes made by LB944 became effective April 5, 2018. Changes made by LB1081A became effective July 19, 2018.



## UNIFORM COMMERCIAL CODE

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## ARTICLE 1

## GENERAL PROVISIONS

## Part 1. GENERAL PROVISIONS

## Section

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- 1-102. Scope of article.
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## Part 1

## GENERAL PROVISIONS

**1-101 Short titles.**

- (a) Sections 1-101 to 10-103 may be cited as the Uniform Commercial Code.
- (b) This article may be cited as Uniform Commercial Code—General Provisions.

**Source:** Laws 2005, LB 570, § 6; Laws 2013, LB210, § 1.

**1-102 Scope of article.**

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

**Source:** Laws 2005, LB 570, § 7.

**1-103 Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.**

(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to simplify, clarify, and modernize the law governing commercial transactions;

(2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

**Source:** Laws 2005, LB 570, § 8.

**1-104 Construction against implied repeal.**

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**Source:** Laws 2005, LB 570, § 9.

**1-105 Severability.**

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of the code are severable.

**Source:** Laws 2005, LB 570, § 10.

**1-106 Use of singular and plural; gender.**

In the Uniform Commercial Code, unless the statutory context otherwise requires:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of any gender also refer to any other gender.

**Source:** Laws 2005, LB 570, § 11.

**1-107 Section captions.**

Section captions are part of the Uniform Commercial Code.

**Source:** Laws 2005, LB 570, § 12.

**1-108 Relation to Electronic Signatures in Global and National Commerce Act.**

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., except that nothing in this article modifies, limits, or supersedes section 7001(c) of that act or authorizes electronic delivery of any of the notices described in section 7003(b) of that act.

**Source:** Laws 2005, LB 570, § 13.

**1-109 Repealed. Laws 2005, LB 570, § 116.**

**1-110 Repealed. Laws 2005, LB 570, § 116.**

## Part 2

## GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

**1-201 General definitions.**

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the code that apply to particular articles or parts thereof:

(1) “Action”, in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 1-303.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the



ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and a personal representative, an executor, or an administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means

a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

(20) “Good faith” means honesty in fact in the conduct or transaction concerned.

(21) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) “Insolvent” means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) “Organization” means a person other than an individual.

(26) “Party”, as distinguished from “third party”, means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) “Purchaser” means a person that takes by purchase.

(31) “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.

(32) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, a personal representative, an executor, or an administrator of an estate.

(34) “Right” includes remedy.

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 1-203. “Security interest” does not include a consumer rental purchase agreement as defined in the Consumer Rental Purchase Agreement Act.

(36) “Send” in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) “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.

(39) “Surety” includes a guarantor or other secondary obligor.

(40) “Term” means a portion of an agreement that relates to a particular matter.

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

(43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

**Source:** Laws 2005, LB 570, § 14.

**Cross References**

Consumer Rental Purchase Agreement Act, see section 69-2101.

**1-202 Notice; knowledge.**

(a) Subject to subsection (f), a person has “notice” of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

(d) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person “receives” a notice or notification when:

(1) it comes to that person’s attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

**Source:** Laws 2005, LB 570, § 15.

**1-203 Lease distinguished from security interest.**

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

**Source:** Laws 2005, LB 570, § 16.

### **1-204 Value.**

Except as otherwise provided in articles 3, 4, and 5, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

**Source:** Laws 2005, LB 570, § 17.

#### **1-205 Reasonable time; seasonableness.**

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

**Source:** Laws 2005, LB 570, § 18.

#### **1-206 Presumptions.**

Whenever the Uniform Commercial Code creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

**Source:** Laws 2005, LB 570, § 19.

### Part 3

## TERRITORIAL APPLICABILITY AND GENERAL RULES

#### **1-301 Territorial applicability; parties’ power to choose applicable law.**

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Section 2-402;

(2) Sections 2A-105 and 2A-106;

(3) Section 4-102;

(4) Section 4A-507;

(5) Section 5-116;

(6) Section 8-110;

(7) Sections 9-301 through 9-307.

**Source:** Laws 2005, LB 570, § 20.

**1-302 Variation by agreement.**

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the code of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**Source:** Laws 2005, LB 570, § 21.

**1-303 Course of performance, course of dealing, and usage of trade.**

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**Source:** Laws 2005, LB 570, § 22.

#### **1-304 Obligation of good faith.**

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

**Source:** Laws 2005, LB 570, § 23.

#### **1-305 Remedies to be liberally administered.**

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the code or by other rule of law.

(b) Any right or obligation declared by the code is enforceable by action unless the provision declaring it specifies a different and limited effect.

**Source:** Laws 2005, LB 570, § 24.

#### **1-306 Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

**Source:** Laws 2005, LB 570, § 25.

#### **1-307 Prima facie evidence by third-party documents.**

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

**Source:** Laws 2005, LB 570, § 26.

#### **1-308 Performance or acceptance under reservation of rights.**

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

**Source:** Laws 2005, LB 570, § 27.

#### **1-309 Option to accelerate at will.**



A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**Source:** Laws 2005, LB 570, § 28.

### **1-310 Subordinated obligations.**

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

**Source:** Laws 2005, LB 570, § 29.

## **ARTICLE 2**

### **SALES**

#### Part 1. SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

##### Section

- 2-103. Definitions and index of definitions.
- 2-104. Definitions; merchant; between merchants; financing agency.

#### Part 2. FORM, FORMATION, AND READJUSTMENT OF CONTRACT

- 2-202. Final written expression; parol or extrinsic evidence.
- 2-208. Repealed. Laws 2005, LB 570, § 116.

#### Part 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 2-310. Open time for payment or running of credit; authority to ship under reservation.
- 2-323. Form of bill of lading required in overseas shipment; overseas.

#### Part 4. TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

- 2-401. Passing of title; reservation for security; limited application of this section.

#### Part 5. PERFORMANCE

- 2-503. Manner of seller's tender of delivery.
- 2-505. Seller's shipment under reservation.
- 2-506. Rights of financing agency.
- 2-509. Risk of loss in the absence of breach.

#### Part 6. BREACH, REPUDIATION, AND EXCUSE

- 2-605. Waiver of buyer's objections by failure to particularize.

#### Part 7. REMEDIES

- 2-705. Seller's stoppage of delivery in transit or otherwise.

### Part 1

#### SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

### **2-103 Definitions and index of definitions.**

(1) In this article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) “Receipt” of goods means taking physical possession of them.

(d) “Seller” means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

“Acceptance”.	Section 2-606.
“Banker’s credit”.	Section 2-325.
“Between merchants”.	Section 2-104.
“Cancellation”.	Section 2-106(4).
“Commercial unit”.	Section 2-105.
“Confirmed credit”.	Section 2-325.
“Conforming to contract”.	Section 2-106.
“Contract for sale”.	Section 2-106.
“Cover”.	Section 2-712.
“Entrusting”.	Section 2-403.
“Financing agency”.	Section 2-104.
“Future goods”.	Section 2-105.
“Goods”.	Section 2-105.
“Identification”.	Section 2-501.
“Installment contract”.	Section 2-612.
“Letter of credit”.	Section 2-325.
“Lot”.	Section 2-105.
“Merchant”.	Section 2-104.
“Overseas”.	Section 2-323.
“Person in position of seller”.	Section 2-707.
“Present sale”.	Section 2-106.
“Sale”.	Section 2-106.
“Sale on approval”.	Section 2-326.
“Sale or return”.	Section 2-326.
“Termination”.	Section 2-106.

(3) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Check”.	Section 3-104.
“Consignee”.	Section 7-102.
“Consignor”.	Section 7-102.
“Consumer goods”.	Section 9-102.
“Dishonor”.	Section 3-502.
“Draft”.	Section 3-104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 1963, c. 544, Art. II, § 2-103, p. 1706; Laws 1991, LB 161, § 3; Laws 1999, LB 550, § 54; Laws 2005, LB 570, § 30.

#### **2-104 Definitions; merchant; between merchants; financing agency.**

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent

or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2-707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

**Source:** Laws 1963, c. 544, Art. II, § 2-104, p. 1708; Laws 2005, LB 570, § 31.

## Part 2

### FORM, FORMATION, AND READJUSTMENT OF CONTRACT

#### **2-202 Final written expression; parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**Source:** Laws 1963, c. 544, Art. II, § 2-202, p. 1712; Laws 2005, LB 570, § 32.

#### **2-208 Repealed. Laws 2005, LB 570, § 116.**

## Part 3

### GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

#### **2-310 Open time for payment or running of credit; authority to ship under reservation.**

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

**Source:** Laws 1963, c. 544, Art. II, § 2-310, p. 1720; Laws 2005, LB 570, § 33.

### **2-323 Form of bill of lading required in overseas shipment; overseas.**

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

**Source:** Laws 1963, c. 544, Art. II, § 2-323, p. 1729; Laws 2005, LB 570, § 34.

## Part 4

### TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

#### **2-401 Passing of title; reservation for security; limited application of this section.**

Each provision of this article with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by

the Uniform Commercial Code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a “sale”.

**Source:** Laws 1963, c. 544, Art. II, § 2-401, p. 1733; Laws 1992, LB 861, § 11; Laws 2005, LB 570, § 35.

## Part 5

### PERFORMANCE

#### **2-503 Manner of seller’s tender of delivery.**

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer’s disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he or she must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

**Source:** Laws 1963, c. 544, Art. II, § 2-503, p. 1738; Laws 2005, LB 570, § 36.

### **2-505 Seller's shipment under reservation.**

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

**Source:** Laws 1963, c. 544, Art. II, § 2-505, p. 1740; Laws 2005, LB 570, § 37.

**2-506 Rights of financing agency.**

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

**Source:** Laws 1963, c. 544, Art. II, § 2-506, p. 1740; Laws 2005, LB 570, § 38.

**2-509 Risk of loss in the absence of breach.**

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him or her to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 2-505); but

(b) if it does require him or her to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his or her receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his or her receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his or her receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 2-327) and on effect of breach on risk of loss (section 2-510).

**Source:** Laws 1963, c. 544, Art. II, § 2-509, p. 1741; Laws 2005, LB 570, § 39.

## Part 6

## BREACH, REPUDIATION, AND EXCUSE

**2-605 Waiver of buyer's objections by failure to particularize.**

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him or her from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or  
 (b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

**Source:** Laws 1963, c. 544, Art. II, § 2-605, p. 1747; Laws 2005, LB 570, § 40.

## Part 7

### REMEDIES

#### **2-705 Seller's stoppage of delivery in transit or otherwise.**

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (section 2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

- (a) receipt of the goods by the buyer; or
- (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or
- (d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**Source:** Laws 1963, c. 544, Art. II, § 2-705, p. 1756; Laws 2005, LB 570, § 41.

## ARTICLE 2A

### LEASES

#### Part 1. GENERAL PROVISIONS

Section

2A-103. Definitions and index of definitions.

2A-104. Leases subject to other law.

#### Part 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

2A-207. Repealed. Laws 2005, LB 570, § 116.



## Section

## Part 5. DEFAULT

## A. In General

2A-501. Default: procedure.

## B. Default by Lessor

2A-514. Waiver of lessee's objections.

2A-518. Cover; substitute goods.

2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

## C. Default by Lessee

2A-526. Lessor's stoppage of delivery in transit or otherwise.

2A-527. Lessor's rights to dispose of goods.

2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

## Part 1

## GENERAL PROVISIONS

**2A-103 Definitions and index of definitions.**

(1) In this article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law.

Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

(z) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

“Accessions”.	Section 2A-310(1).
“Construction mortgage”.	Section 2A-309(1)(d).
“Encumbrance”.	Section 2A-309(1)(e).
“Fixtures”.	Section 2A-309(1)(a).
“Fixture filing”.	Section 2A-309(1)(b).
“Purchase money lease”.	Section 2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

“Account”.	Section 9-102(a)(2).
“Between merchants”.	Section 2-104(3).
“Buyer”.	Section 2-103(1)(a).
“Chattel paper”.	Section 9-102(a)(11).
“Consumer goods”.	Section 9-102(a)(23).
“Document”.	Section 9-102(a)(30).
“Entrusting”.	Section 2-403(3).
“General intangible”.	Section 9-102(a)(42).
“Good faith”.	Section 2-103(1)(b).
“Instrument”.	Section 9-102(a)(47).
“Merchant”.	Section 2-104(1).
“Mortgage”.	Section 9-102(a)(55).
“Pursuant to commitment”.	Section 9-102(a)(69).
“Receipt”.	Section 2-103(1)(c).
“Sale”.	Section 2-106(1).
“Sale on approval”.	Section 2-326.
“Sale or return”.	Section 2-326.
“Seller”.	Section 2-103(1)(d).

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 1991, LB 159, § 5; Laws 1999, LB 550, § 59; Laws 2005, LB 570, § 42; Laws 2011, LB90, § 1.

#### **2A-104 Leases subject to other law.**

(1) A lease, although subject to this article, is also subject to any applicable:

(a) certificate of title statute of this state (the Motor Vehicle Certificate of Title Act);

(b) certificate of title statute of another jurisdiction (section 2A-105); or

(c) consumer protection statute of this state, or final consumer protection decision of a court of this state existing on September 6, 1991.

(2) In case of conflict between this article, other than sections 2A-105, 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

**Source:** Laws 1991, LB 159, § 6; Laws 1995, LB 589, § 11; Laws 2005, LB 276, § 113.

#### **Cross References**

**Motor Vehicle Certificate of Title Act**, see section 60-101.

## Part 2

## FORMATION AND CONSTRUCTION OF LEASE CONTRACT

**2A-207 Repealed. Laws 2005, LB 570, § 116.**

## Part 5

## DEFAULT

## A. In General

**2A-501 Default: procedure.**

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in section 1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

**Source:** Laws 1991, LB 159, § 51; Laws 2005, LB 570, § 43.

## B. Default by Lessor

**2A-514 Waiver of lessee's objections.**

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (section 2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

**Source:** Laws 1991, LB 159, § 64; Laws 2005, LB 570, § 44.

**2A-518 Cover; substitute goods.**

(1) After a default by a lessor under the lease contract of a type described in section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 2A-519 governs.

**Source:** Laws 1991, LB 159, § 68; Laws 2005, LB 570, § 45.

**2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and

consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**Source:** Laws 1991, LB 159, § 69; Laws 2005, LB 570, § 46.

### C. Default by Lessee

#### **2A-526 Lessor's stoppage of delivery in transit or otherwise.**

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**Source:** Laws 1991, LB 159, § 76; Laws 2005, LB 570, § 47.

#### **2A-527 Lessor's rights to dispose of goods.**

(1) After a default by a lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed

under section 2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A-508(5)).

**Source:** Laws 1991, LB 159, § 77; Laws 2005, LB 570, § 48.

### **2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A-530, due allowance for costs reasonably incurred, and due credit for payments or proceeds of disposition.

**Source:** Laws 1991, LB 159, § 78; Laws 2005, LB 570, § 49.

## **ARTICLE 3**

### **NEGOTIABLE INSTRUMENTS**

#### **Part 1. GENERAL PROVISIONS AND DEFINITIONS**

Section

3-103. Definitions.

3-104. Negotiable instrument.



## Section

3-118. Statute of limitations.

## Part 3. ENFORCEMENT OF INSTRUMENTS

3-309. Enforcement of lost, destroyed, or stolen instrument.

## Part 4. LIABILITY OF PARTIES

3-416. Transfer warranties.

3-417. Presentment warranties.

## Part 1

## GENERAL PROVISIONS AND DEFINITIONS

**3-103 Definitions.**

(a) In this article:

(1) “Acceptor” means a drawee who has accepted a draft.

(2) “Drawee” means a person ordered in a draft to make payment.

(3) “Drawer” means a person who signs or is identified in a draft as a person ordering payment.

(4) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) “Maker” means a person who signs or is identified in a note as a person undertaking to pay.

(6) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) “Ordinary care” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(8) “Party” means a party to an instrument.

(9) “Promise” means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) “Prove” with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(11) “Remitter” means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

“Acceptance”.

Section 3-409.

“Accommodated party”.

Section 3-419.

“Accommodation party”.	Section 3-419.
“Alteration”.	Section 3-407.
“Anomalous indorsement”.	Section 3-205.
“Blank indorsement”.	Section 3-205.
“Cashier’s check”.	Section 3-104.
“Certificate of deposit”.	Section 3-104.
“Certified check”.	Section 3-409.
“Check”.	Section 3-104.
“Consideration”.	Section 3-303.
“Demand draft”.	Section 3-104.
“Draft”.	Section 3-104.
“Holder in due course”.	Section 3-302.
“Incomplete instrument”.	Section 3-115.
“Indorsement”.	Section 3-204.
“Indorser”.	Section 3-204.
“Issue”.	Section 3-105.
“Issuer”.	Section 3-105.
“Negotiable instrument”.	Section 3-104.
“Negotiation”.	Section 3-201.
“Note”.	Section 3-104.
“Payable at a definite time”.	Section 3-108.
“Payable on demand”.	Section 3-108.
“Payable to bearer”.	Section 3-109.
“Payable to order”.	Section 3-109.
“Payment”.	Section 3-602.
“Person entitled to enforce”.	Section 3-301.
“Presentment”.	Section 3-501.
“Reacquisition”.	Section 3-207.
“Special indorsement”.	Section 3-205.
“Teller’s check”.	Section 3-104.
“Transfer of instrument”.	Section 3-203.
“Traveler’s check”.	Section 3-104.
“Value”.	Section 3-303.

(c) The following definitions in other articles apply to this article:

“Bank”.	Section 4-105.
“Banking day”.	Section 4-104.
“Clearinghouse”.	Section 4-104.
“Collecting bank”.	Section 4-105.
“Depositary bank”.	Section 4-105.
“Documentary draft”.	Section 4-104.
“Intermediary bank”.	Section 4-105.
“Item”.	Section 4-104.
“Payor bank”.	Section 4-105.
“Suspends payments”.	Section 4-104.

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 1991, LB 161, § 7; Laws 2003, LB 128, § 1; Laws 2005, LB 570, § 50.

### 3-104 Negotiable instrument.

(a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) “Instrument” means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of “check” in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(f) “Check” means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier’s check or teller’s check, or (iii) a demand draft. An instrument may be a check even though it is described on its face by another term, such as “money order”.

(g) “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) “Teller’s check” means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) “Traveler’s check” means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term “traveler’s check” or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) “Demand draft” means a writing not signed by a customer, as defined in section 4-104, that is created by a third party under the purported authority of the customer for the purpose of charging the customer’s account with a bank. A demand draft shall contain the customer’s account number and may contain any or all of the following:

(i) The customer’s printed or typewritten name;

(ii) A notation that the customer authorized the draft; or

(iii) The statement “no signature required”, “authorization on file”, “signature on file”, or words to that effect.

Demand draft does not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 3-307.

**Source:** Laws 1991, LB 161, § 8; Laws 2003, LB 128, § 2.

### **3-118 Statute of limitations.**

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) Subject to the provisions of section 25-227, an action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three years after the cause of action accrues.

**Source:** Laws 1991, LB 161, § 22; Laws 2008, LB151, § 2.

## Part 3

### ENFORCEMENT OF INSTRUMENTS

#### **3-309 Enforcement of lost, destroyed, or stolen instrument.**

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person seeking to enforce the instrument (1) was entitled to enforce the instrument when loss of possession occurred or (2) had directly or

indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

**Source:** Laws 1991, LB 161, § 39; Laws 2003, LB 128, § 3.

#### Part 4

### LIABILITY OF PARTIES

#### **3-416 Transfer warranties.**

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) if the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(e) If the warranty under subdivision (a)(6) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

**Source:** Laws 1991, LB 161, § 57; Laws 2003, LB 128, § 4.

### **3-417 Presentment warranties.**

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to

the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check as provided in subsection (f) of section 3-104.

(h) If the warranty under subdivision (a)(4) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

**Source:** Laws 1991, LB 161, § 58; Laws 2003, LB 128, § 5.

## ARTICLE 4

### BANK DEPOSITS AND COLLECTIONS

#### Part 1. GENERAL PROVISIONS AND DEFINITIONS

##### Section

4-104. Definitions and index of definitions.

#### Part 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

4-207. Transfer warranties.

4-208. Presentment warranties.

4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

#### Part 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

4-403. Customer's right to stop payment; burden of proof of loss.

## Part 1

### GENERAL PROVISIONS AND DEFINITIONS

#### **4-104 Definitions and index of definitions.**

(a) In this article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions but, for purposes of a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions;

(4) "Clearinghouse" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 8-102) or instructions for uncertificated securities (section 8-102), or other certificates,

statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) “Draft” means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;

(8) “Drawee” means a person ordered in a draft to make payment;

(9) “Item” means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article 4A or a credit or debit card slip;

(10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) “Settle” means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

“Agreement for electronic presentment”.	Section 4-110.
“Bank”.	Section 4-105.
“Collecting bank”.	Section 4-105.
“Depositary bank”.	Section 4-105.
“Intermediary bank”.	Section 4-105.
“Payor bank”.	Section 4-105.
“Presenting bank”.	Section 4-105.
“Presentment notice”.	Section 4-110.

(c) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Acceptance”.	Section 3-409.
“Alteration”.	Section 3-407.
“Cashier’s check”.	Section 3-104.
“Certificate of deposit”.	Section 3-104.
“Certified check”.	Section 3-409.
“Check”.	Section 3-104.
“Good faith”.	Section 3-103.
“Holder in due course”.	Section 3-302.
“Instrument”.	Section 3-104.
“Notice of dishonor”.	Section 3-503.
“Order”.	Section 3-103.
“Ordinary care”.	Section 3-103.
“Person entitled to enforce”.	Section 3-301.
“Presentment”.	Section 3-501.
“Promise”.	Section 3-103.
“Prove”.	Section 3-103.
“Teller’s check”.	Section 3-104.
“Unauthorized signature”.	Section 3-403.



(d) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 1963, c. 544, Art. IV, § 4-104, p. 1812; Laws 1991, LB 161, § 75; Laws 1994, LB 1015, § 1; Laws 1995, LB 97, § 3; Laws 2005, LB 570, § 51.

## Part 2

### COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

#### **4-207 Transfer warranties.**

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) the warrantor is a person entitled to enforce the item;
- (2) all signatures on the item are authentic and authorized;
- (3) the item has not been altered;
- (4) the item is not subject to a defense or claim in recoupment (section 3-305(a)) of any party that can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
- (6) if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty under subdivision (a)(6) of this section is not given by a transferor or collecting bank under applicable conflict of law rules, the warran-

ty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee.

**Source:** Laws 1963, c. 544, Art. IV, § 4-207, p. 1818; Laws 1991, LB 161, § 89; Laws 2003, LB 128, § 6.

#### **4-208 Presentment warranties.**

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check as provided in subsection (f) of section 3-104.

(h) If the warranty under subdivision (a)(4) of this section is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

**Source:** Laws 1963, c. 544, Art. IV, § 4-208, p. 1820; Laws 1991, LB 161, § 90; Laws 2003, LB 128, § 7.

#### **4-210 Security interest of collecting bank in items, accompanying documents and proceeds.**

(a) A collecting bank has a security interest in an item and any accompanying documents, or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of chargeback; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (section 9-203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

**Source:** Laws 1963, c. 544, Art. IV, § 4-210, p. 1821; Laws 1991, LB 161, § 92; Laws 1999, LB 550, § 63; Laws 2005, LB 570, § 52.

#### Part 4

### RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

#### **4-403 Customer's right to stop payment; burden of proof of loss.**

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 4-303. If the signature of

more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 4-402.

**Source:** Laws 1963, c. 544, Art. IV, § 4-403, p. 1830; Laws 1991, LB 161, § 104; Laws 2016, LB759, § 1.

## ARTICLE 4A

### FUNDS TRANSFERS

#### Part 1. SUBJECT MATTER AND DEFINITIONS

Section

4A-105. Other definitions.

4A-106. Time payment order is received.

4A-108. Relationship to Electronic Fund Transfer Act.

#### Part 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

#### Part 1

#### SUBJECT MATTER AND DEFINITIONS

##### **4A-105 Other definitions.**

(a) In this article:

(1) “Authorized account” means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) “Customer” means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) “Funds-transfer business day” of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) “Funds-transfer system” means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Prove” with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(b) Other definitions applying to this article and the sections in which they appear are:

“Acceptance”.	Section 4A-209.
“Beneficiary”.	Section 4A-103.
“Beneficiary’s bank”.	Section 4A-103.
“Executed”.	Section 4A-301.
“Execution date”.	Section 4A-301.
“Funds transfer”.	Section 4A-104.
“Funds-transfer system rule”.	Section 4A-501.
“Intermediary bank”.	Section 4A-104.
“Originator”.	Section 4A-104.
“Originator’s bank”.	Section 4A-104.
“Payment by beneficiary’s bank to beneficiary”.	Section 4A-405.
“Payment by originator to beneficiary”.	Section 4A-406.
“Payment by sender to receiving bank”.	Section 4A-403.
“Payment date”.	Section 4A-401.
“Payment order”.	Section 4A-103.
“Receiving bank”.	Section 4A-103.
“Security procedure”.	Section 4A-201.
“Sender”.	Section 4A-103.

(c) The following definitions in article 4 apply to this article:

“Clearinghouse”.	Section 4-104.
“Item”.	Section 4-104.
“Suspends payments”.	Section 4-104.

(d) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 1991, LB 160, § 6; Laws 2005, LB 570, § 53.

**4A-106 Time payment order is received.**

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1-202. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a

funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

**Source:** Laws 1991, LB 160, § 7; Laws 2005, LB 570, § 54.

#### **4A-108 Relationship to Electronic Fund Transfer Act.**

(a) Except as provided in subsection (b), this article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed on January 1, 2013.

(b) This article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. 1693o-1, as such section existed on January 1, 2013, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. 1693a, as such section existed on January 1, 2013.

(c) In a funds transfer to which this article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

**Source:** Laws 1991, LB 160, § 9; Laws 2013, LB146, § 1.

### Part 2

## ISSUE AND ACCEPTANCE OF PAYMENT ORDER

#### **4A-204 Refund of payment and duty of customer to report with respect to unauthorized payment order.**

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

**Source:** Laws 1991, LB 160, § 13; Laws 2005, LB 570, § 55.

**ARTICLE 5**  
**LETTERS OF CREDIT**

Part 1. GENERAL PROVISIONS

Section  
5-103. Scope.

Part 1

GENERAL PROVISIONS

**5-103 Scope.**

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d), and except to the extent prohibited in sections 1-302 and 5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

**Source:** Laws 1996, LB 1028, § 5; Laws 2005, LB 570, § 56.

**ARTICLE 7**  
**DOCUMENTS OF TITLE**

Part 1. GENERAL

Section  
7-101. Short title.  
7-102. Definitions and index of definitions.  
7-103. Relation of article to treaty or statute.  
7-104. Negotiable and nonnegotiable document of title.  
7-105. Reissuance in alternative medium.  
7-106. Control of electronic document of title.

Part 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

7-201. Person that may issue a warehouse receipt; storage under bond.  
7-202. Form of warehouse receipt; effect of omission.  
7-203. Liability for nonreceipt or misdescription.  
7-204. Duty of care; contractual limitation of warehouse's liability.  
7-205. Title under warehouse receipt defeated in certain cases.  
7-206. Termination of storage at warehouse's option.  
7-207. Goods must be kept separate; fungible goods.  
7-208. Altered warehouse receipts.  
7-209. Lien of warehouse.  
7-210. Enforcement of warehouse's lien.

## Section

## Part 3. BILLS OF LADING: SPECIAL PROVISIONS

- 7-301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load, and count”; improper handling.
- 7-302. Through bills of lading and similar documents of title.
- 7-303. Diversion; reconsignment; change of instructions.
- 7-304. Tangible bills of lading in a set.
- 7-305. Destination bills.
- 7-306. Altered bills of lading.
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## Part 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

- 7-401. Irregularities in issue of receipt or bill or conduct of issuer.
- 7-402. Duplicate document of title; overissue.
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## Part 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

- 7-501. Form of negotiation and requirements of due negotiation.
- 7-502. Rights acquired by due negotiation.
- 7-503. Document of title to goods defeated in certain cases.
- 7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.
- 7-505. Indorser not guarantor for other parties.
- 7-506. Delivery without indorsement: right to compel indorsement.
- 7-507. Warranties on negotiation or delivery of document of title.
- 7-508. Warranties of collecting bank as to documents of title.
- 7-509. Adequate compliance with commercial contract.

## Part 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

- 7-601. Lost, stolen, or destroyed documents of title.
- 7-602. Judicial process against goods covered by negotiable document of title.
- 7-603. Conflicting claims; interpleader.

## Part 7. MISCELLANEOUS PROVISIONS

- 7-701. Omitted.
- 7-702. Omitted.
- 7-703. Applicability.
- 7-704. Savings clause.

## Part 1

## GENERAL

**7-101 Short title.**

This article may be cited as Uniform Commercial Code—Documents of Title.

**Source:** Laws 2005, LB 570, § 57.

**7-102 Definitions and index of definitions.**

(a) In this article, unless the context otherwise requires:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.



(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) “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.

(11) “Sign” means, with 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 sound, symbol, or process.

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) “Contract for sale”, section 2-106.

(2) “Lessee in ordinary course of business”, section 2A-103.

(3) “Receipt” of goods, section 2-103.

(c) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 2005, LB 570, § 58.

### **7-103 Relation of article to treaty or statute.**

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act and this article, this article governs.

**Source:** Laws 2005, LB 570, § 59.

#### **7-104 Negotiable and nonnegotiable document of title.**

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

**Source:** Laws 2005, LB 570, § 60.

#### **7-105 Reissuance in alternative medium.**

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

**Source:** Laws 2005, LB 570, § 61.

#### **7-106 Control of electronic document of title.**

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

**Source:** Laws 2005, LB 570, § 62.

#### Part 2

### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

#### **7-201 Person that may issue a warehouse receipt; storage under bond.**

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

**Source:** Laws 2005, LB 570, § 63.

### **7-202 Form of warehouse receipt; effect of omission.**

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under section 7-403 or its duty of care under section 7-204. Any contrary provision is ineffective.

**Source:** Laws 2005, LB 570, § 64.

### **7-203 Liability for nonreceipt or misdescription.**

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified

by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

**Source:** Laws 2005, LB 570, § 65.

#### **7-204 Duty of care; contractual limitation of warehouse’s liability.**

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not modify or repeal any law of this state that imposes a higher responsibility upon the warehouse or invalidates contractual limitations that would be permissible under this article.

**Source:** Laws 2005, LB 570, § 66.

#### **7-205 Title under warehouse receipt defeated in certain cases.**

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

**Source:** Laws 2005, LB 570, § 67.

#### **7-206 Termination of storage at warehouse’s option.**

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods

and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

**Source:** Laws 2005, LB 570, § 68.

#### **7-207 Goods must be kept separate; fungible goods.**

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

**Source:** Laws 2005, LB 570, § 69.

#### **7-208 Altered warehouse receipts.**

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

**Source:** Laws 2005, LB 570, § 70.

#### **7-209 Lien of warehouse.**

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or

storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 7-403; or

(C) power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**Source:** Laws 2005, LB 570, § 71.

### **7-210 Enforcement of warehouse's lien.**

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that

market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**Source:** Laws 2005, LB 570, § 72.



## Part 3

## BILLS OF LADING: SPECIAL PROVISIONS

**7-301 Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load, and count”; improper handling.**

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count”, or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) words such as “shipper’s weight, load, and count”, or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper’s request in a record to do so. In that case, “shipper’s weight” or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words “shipper’s weight, load, and count”, or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

**Source:** Laws 2005, LB 570, § 73.

**7-302 Through bills of lading and similar documents of title.**

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an

undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

**Source:** Laws 2005, LB 570, § 74.

### **7-303 Diversion; reconsignment; change of instructions.**

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

**Source:** Laws 2005, LB 570, § 75.

### **7-304 Tangible bills of lading in a set.**

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods

have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

**Source:** Laws 2005, LB 570, § 76.

### **7-305 Destination bills.**

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7-105, may procure a substitute bill to be issued at any place designated in the request.

**Source:** Laws 2005, LB 570, § 77.

### **7-306 Altered bills of lading.**

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

**Source:** Laws 2005, LB 570, § 78.

### **7-307 Lien of carrier.**

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**Source:** Laws 2005, LB 570, § 79.

### **7-308 Enforcement of carrier's lien.**

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in section 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**Source:** Laws 2005, LB 570, § 80.

### **7-309 Duty of care; contractual limitation of carrier's liability.**

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

**Source:** Laws 2005, LB 570, § 81.

#### Part 4

### WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

#### **7-401 Irregularities in issue of receipt or bill or conduct of issuer.**

The obligations imposed by this article on an issuer apply to a document of title even if:

- (1) the document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;
- (2) the issuer violated laws regulating the conduct of its business;
- (3) the goods covered by the document were owned by the bailee when the document was issued; or
- (4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

**Source:** Laws 2005, LB 570, § 82.

#### **7-402 Duplicate document of title; overissue.**

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

**Source:** Laws 2005, LB 570, § 83.

#### **7-403 Obligation of bailee to deliver; excuse.**

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

- (1) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to section 2-705 or by a lessor of its right to stop delivery pursuant to section 2A-526;

(5) a diversion, reconsignment, or other disposition pursuant to section 7-303;

(6) release, satisfaction, or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7-503(a):

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

**Source:** Laws 2005, LB 570, § 84.

#### **7-404 No liability for good faith delivery pursuant to document of title.**

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods.

**Source:** Laws 2005, LB 570, § 85.

### Part 5

#### WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

#### **7-501 Form of negotiation and requirements of due negotiation.**

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

**Source:** Laws 2005, LB 570, § 86.

### **7-502 Rights acquired by due negotiation.**

(a) Subject to sections 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

**Source:** Laws 2005, LB 570, § 87.

### **7-503 Document of title to goods defeated in certain cases.**

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 7-403; or

(C) power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**Source:** Laws 2005, LB 570, § 88.

### **7-504 Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.**

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor which could treat the transfer as void under section 2-402 or 2A-308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.



(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 2-705 or a lessor under section 2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

**Source:** Laws 2005, LB 570, § 89.

#### **7-505 Indorser not guarantor for other parties.**

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

**Source:** Laws 2005, LB 570, § 90.

#### **7-506 Delivery without indorsement: right to compel indorsement.**

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

**Source:** Laws 2005, LB 570, § 91.

#### **7-507 Warranties on negotiation or delivery of document of title.**

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

**Source:** Laws 2005, LB 570, § 92.

#### **7-508 Warranties of collecting bank as to documents of title.**

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

**Source:** Laws 2005, LB 570, § 93.

#### **7-509 Adequate compliance with commercial contract.**

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5.

**Source:** Laws 2005, LB 570, § 94.

Part 6

WAREHOUSE RECEIPTS AND BILLS OF LADING:  
MISCELLANEOUS PROVISIONS

**7-601 Lost, stolen, or destroyed documents of title.**

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

**Source:** Laws 2005, LB 570, § 95.

**7-602 Judicial process against goods covered by negotiable document of title.**

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

**Source:** Laws 2005, LB 570, § 96.

**7-603 Conflicting claims; interpleader.**

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

**Source:** Laws 2005, LB 570, § 97.

## Part 7

## MISCELLANEOUS PROVISIONS

**7-701 Omitted.****7-702 Omitted.****7-703 Applicability.**

This article applies to a document of title that is issued or a bailment that arises on or after January 1, 2006. This article does not apply to a document of title that is issued or a bailment that arises before January 1, 2006, even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after January 1, 2006. This article does not apply to a right of action that has accrued before January 1, 2006.

**Source:** Laws 2005, LB 570, § 98.

**7-704 Savings clause.**

A document of title issued or a bailment that arises before January 1, 2006, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by Laws 2005, LB 570, as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

**Source:** Laws 2005, LB 570, § 99.

**ARTICLE 8****INVESTMENT SECURITIES**

## Part 1. SHORT TITLE AND GENERAL MATTERS

## Section

8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

## Part 1

## SHORT TITLE AND GENERAL MATTERS

**8-103 Rules for determining whether certain obligations and interests are securities or financial assets.**

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets,

its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless section 8-102(a)(9)(iii) applies.

**Source:** Laws 1995, LB 97, § 7; Laws 1999, LB 550, § 66; Laws 2005, LB 570, § 100.

## ARTICLE 9 SECURED TRANSACTIONS

### Part 1. GENERAL PROVISIONS

#### Subpart 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

##### Section

- 9-101. Short title.
- 9-102. Definitions and index of definitions.
- 9-105. Control of electronic chattel paper.

#### Part 2. EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

##### Subpart 1. EFFECTIVENESS AND ATTACHMENT

- 9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

##### Subpart 2. RIGHTS AND DUTIES

- 9-207. Rights and duties of secured party having possession or control of collateral.
- 9-208. Additional duties of secured party having control of collateral.

#### Part 3. PERFECTION AND PRIORITY

##### Subpart 1. LAW GOVERNING PERFECTION AND PRIORITY

- 9-301. Law governing perfection and priority of security interests.
- 9-304. Law governing perfection and priority of security interests in deposit accounts.
- 9-307. Location of debtor.

##### Subpart 2. PERFECTION

- 9-309. Security interest perfected upon attachment.
- 9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
- 9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.
- 9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- 9-313. When possession by or delivery to secured party perfects security interest without filing.
- 9-314. Perfection by control.

## **SECURED TRANSACTIONS**

### **Section**

- 9-315. Secured party's rights on disposition of collateral and in proceeds.
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- 9-320. Buyer of goods.
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### **Part 4. RIGHTS OF THIRD PARTIES**

- 9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.
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- 9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.
- 9-503. Name of debtor and secured party.
- 9-506. Effect of errors or omissions.
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## Section

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## Part 1

## GENERAL PROVISIONS

## Subpart 1

## SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

**9-101 Short title.**

This article may be cited as Uniform Commercial Code - Secured Transactions.

**Source:** Laws 1999, LB 550, § 74; Laws 2013, LB210, § 2.

**9-102 Definitions and index of definitions.**

(a) In this article:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

The term also includes every lien created under sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 54-201, and 54-208, Reissue Revised Statutes of Nebraska, and Chapter 52, article 14, Reissue Revised Statutes of Nebraska.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation

with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.



(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in section 7-201(b).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) “Filing office” means an office designated in section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of

animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment including, but not limited to, a writing that would otherwise qualify as a certificate of deposit (defined in section 3-104(j)) but for the fact that the writing contains a limitation on transfer. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) “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 therein. The term includes any structure that meets all of the requirements of this subdivision except 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 Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor”, except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9-203(d).

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to”, with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subdivision (A);

(D) the spouse of an individual described in subdivision (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subdivision (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in section 9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621, and 9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) “Public organic record” means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

(69) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(70) “Record”, except as used in “for record”, “of record”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) “Registered organization” means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state.

(72) “Secondary obligor” means an obligor to the extent that:

(A) the obligor’s obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) “Secured party” means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(74) “Security agreement” means an agreement that creates or provides for a security interest.

(75) “Send”, in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subdivision (A).

(76) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) “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.

(78) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) “Transmitting utility” means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Applicant”.	Section 5-102.
“Beneficiary”.	Section 5-102.
“Broker”.	Section 8-102.
“Certificated security”.	Section 8-102.
“Check”.	Section 3-104.
“Clearing corporation”.	Section 8-102.
“Contract for sale”.	Section 2-106.
“Customer”.	Section 4-104.
“Entitlement holder”.	Section 8-102.
“Financial asset”.	Section 8-102.
“Holder in due course”.	Section 3-302.
“Issuer” (with respect to a letter of credit or letter-of-credit right).	Section 5-102.

“Issuer” (with respect to a security).	Section 8-201.
“Issuer” (with respect to a document of title).	Section 7-102.
“Lease”.	Section 2A-103.
“Lease agreement”.	Section 2A-103.
“Lease contract”.	Section 2A-103.
“Leasehold interest”.	Section 2A-103.
“Lessee”.	Section 2A-103.
“Lessee in ordinary course of business”.	Section 2A-103.
“Lessor”.	Section 2A-103.
“Lessor’s residual interest”.	Section 2A-103.
“Letter of credit”.	Section 5-102.
“Merchant”.	Section 2-104.
“Negotiable instrument”.	Section 3-104.
“Nominated person”.	Section 5-102.
“Note”.	Section 3-104.
“Proceeds of a letter of credit”.	Section 5-114.
“Prove”.	Section 3-103.
“Sale”.	Section 2-106.
“Securities account”.	Section 8-501.
“Securities intermediary”.	Section 8-102.
“Security”.	Section 8-102.
“Security certificate”.	Section 8-102.
“Security entitlement”.	Section 8-102.
“Uncertificated security”.	Section 8-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**Source:** Laws 1999, LB 550, § 75; Laws 2000, LB 929, § 25; Laws 2001, LB 54, § 28; Laws 2005, LB 570, § 101; Laws 2011, LB90, § 2.

### 9-105 Control of electronic chattel paper.

(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

**Source:** Laws 1999, LB 550, § 78; Laws 2011, LB90, § 3.



## Part 2

EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT  
OF SECURITY INTEREST; RIGHTS OF PARTIES TO  
SECURITY AGREEMENT

## Subpart 1

## EFFECTIVENESS AND ATTACHMENT

**9-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.**

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 7-106, 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to section 4-210 on the security interest of a collecting bank, section 5-118 on the security interest of a letter-of-credit issuer or nominated person, section 9-110 on a security interest arising under article 2 or 2A, and section 9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subdivision (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

**Source:** Laws 1999, LB 550, § 86; Laws 2005, LB 570, § 102.

#### Subpart 2

### RIGHTS AND DUTIES

#### **9-207 Rights and duties of secured party having possession or control of collateral.**

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

**Source:** Laws 1999, LB 550, § 90; Laws 2005, LB 570, § 103.

### **9-208 Additional duties of secured party having control of collateral.**

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under section 9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is

maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

**Source:** Laws 1999, LB 550, § 91; Laws 2005, LB 570, § 104.

### Part 3

## PERFECTION AND PRIORITY

### Subpart 1

#### LAW GOVERNING PERFECTION AND PRIORITY

##### **9-301 Law governing perfection and priority of security interests.**

Except as otherwise provided in sections 9-303 to 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**Source:** Laws 1999, LB 550, § 94; Laws 2005, LB 570, § 105.

**9-304 Law governing perfection and priority of security interests in deposit accounts.**

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If subdivision (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

**Source:** Laws 1999, LB 550, § 97; Laws 2011, LB90, § 4.

**9-307 Location of debtor.**

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining

priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) in the District of Columbia, if neither subdivision (1) nor subdivision (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

**Source:** Laws 1999, LB 550, § 100; Laws 2011, LB90, § 5.

## Subpart 2

### PERFECTION

#### **9-309 Security interest perfected upon attachment.**

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in section 9-311(b) with respect to consumer goods that are subject to a statute, regulation, or treaty described in section 9-311(a);

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under section 2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;
- (7) a security interest of a collecting bank arising under section 4-210;
- (8) a security interest of an issuer or nominated person arising under section 5-118;
- (9) a security interest arising in the delivery of a financial asset under section 9-206(c);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and
- (14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

**Source:** Laws 1999, LB 550, § 102; Laws 2011, LB90, § 6.

**9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.**

- (a) Except as otherwise provided in subsection (b) and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.
- (b) The filing of a financing statement is not necessary to perfect a security interest:
  - (1) that is perfected under section 9-308(d), (e), (f), or (g);
  - (2) that is perfected under section 9-309 when it attaches;
  - (3) in property subject to a statute, regulation, or treaty described in section 9-311(a);
  - (4) in goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);
  - (5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 9-312(e), (f), or (g);
  - (6) in collateral in the secured party's possession under section 9-313;
  - (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;
  - (8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 9-314;
  - (9) in proceeds which is perfected under section 9-315; or
  - (10) that is perfected under section 9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

**Source:** Laws 1999, LB 550, § 103; Laws 2005, LB 570, § 106.

**9-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.**

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9-310(a);

(2) the following statutes of this state: (i) sections 60-164 and 60-165, Reissue Revised Statutes of Nebraska, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 5 apply to a security interest in that collateral created by him or her as debtor; and (ii) section 37-1282, Reissue Revised Statutes of Nebraska, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 5 apply to a security interest in that collateral created by him or her as debtor; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subdivision (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

**Source:** Laws 1999, LB 550, § 104; Laws 2000, LB 929, § 28; Laws 2005, LB 276, § 114; Laws 2011, LB90, § 7.



**9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.**

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under section 9-314;

(2) and except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under section 9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

**Source:** Laws 1999, LB 550, § 105; Laws 2005, LB 570, § 107.

**9-313 When possession by or delivery to secured party perfects security interest without filing.**

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

**Source:** Laws 1999, LB 550, § 106; Laws 2005, LB 570, § 108.

#### **9-314 Perfection by control.**

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 9-104, 9-105, or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

- (1) the secured party does not have control; and
- (2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**Source:** Laws 1999, LB 550, § 107; Laws 2005, LB 570, § 109.

#### **9-315 Secured party's rights on disposition of collateral and in proceeds.**

(a)(1) Except as otherwise provided in this article and in section 2-403(2):

(A) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(B) a security interest attaches to any identifiable proceeds of collateral.

(2) Authorization to sell, lease, license, exchange, or otherwise dispose of farm products shall not be implied or otherwise result, nor shall a security interest in farm products be considered to be waived, modified, released, or terminated if such disposition is conditioned upon the secured party's receipt of proceeds or from any course of conduct, course of performance, or course of dealing between the parties or by any usage of trade in any case in which (A) the secured party has filed an effective financing statement in accordance with the provisions of sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, or (B) the buyer of farm products has received notice from the secured party or the seller of farm products in accordance with the provisions of 7 U.S.C. 1631(e)(1)(A), unless the buyer has secured a waiver or release of

the security interest specified in such effective financing statement or notice from the secured party.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by section 9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or

(2) the twenty-first day after the security interest attaches to the proceeds.

**Source:** Laws 1999, LB 550, § 108; Laws 2003, LB 4, § 6; Laws 2007, LB124, § 70.

### **9-316 Effect of change in governing law.**

(a) A security interest perfected pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9-311(b) or 9-313 are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
- (2) the expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- (1) the time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

- (1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under subdivision (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**Source:** Laws 1999, LB 550, § 109; Laws 2011, LB90, § 8.

### Subpart 3

### PRIORITY

#### **9-317 Interests that take priority over or take free of security interest or agricultural lien.**

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within thirty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**Source:** Laws 1999, LB 550, § 110; Laws 2000, LB 929, § 29; Laws 2005, LB 82, § 8; Laws 2005, LB 570, § 110; Laws 2011, LB90, § 9.

### **9-320 Buyer of goods.**

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A buyer of farm products may be subject to a security interest under sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

(f) No buyer shall be allowed to take advantage of and apply the right of offset to defeat a priority established by any lien or security interest.

**Source:** Laws 1999, LB 550, § 113; Laws 2003, LB 4, § 7; Laws 2007, LB124, § 71.

### **9-324 Priority of purchase-money security interests.**

(a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable

proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within thirty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subdivisions (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(d)(1) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(A) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(B) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(C) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(D) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(2) For purposes of this subsection, possession means (A) possession by the debtor or (B) possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor.



(e) Subdivisions (d)(1)(B) through (D) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, section 9-322(a) applies to the qualifying security interests.

**Source:** Laws 1999, LB 550, § 117; Laws 2005, LB 82, § 9; Laws 2008, LB851, § 27.

### **9-326 Priority of security interests created by new debtor.**

(a) Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of section 9-316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

**Source:** Laws 1999, LB 550, § 119; Laws 2011, LB90, § 10.

### **9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the

conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**Source:** Laws 1999, LB 550, § 131; Laws 2005, LB 570, § 111.

Part 4

RIGHTS OF THIRD PARTIES

**9-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the

creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(f) Except as otherwise provided in sections 2A-303 and 9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subdivision (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provisions of the law of this state.

**Source:** Laws 1999, LB 550, § 141; Laws 2000, LB 929, § 34; Laws 2011, LB90, § 11.

**9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.**

(a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provisions of the law of this state.

**Source:** Laws 1999, LB 550, § 143; Laws 2000, LB 929, § 36; Laws 2011, LB90, § 12.

Part 5

FILING

Subpart 1

FILING OFFICE; CONTENTS AND EFFECTIVENESS  
OF FINANCING STATEMENT

**9-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.**

(a) Subject to subsection (b), a financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed for record in the real property records;
- (3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) the record indicates the goods or accounts that it covers;
- (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) the record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate that it is to be filed in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 9-503(a)(4) applies; and

- (4) the record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

**Source:** Laws 1999, LB 550, § 146; Laws 2011, LB90, § 13.

### **9-503 Name of debtor and secured party.**

(a) A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in subdivision (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subdivision (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subdivision (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) subject to subsection (g), if the debtor is an individual to whom the Department of Motor Vehicles has issued a driver's license or state identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license or state identification card;

(5) if the debtor is an individual to whom subdivision (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subdivision (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) If the Department of Motor Vehicles has issued to an individual more than one driver's license or state identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the "name of the settlor or testator" means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record.

**Source:** Laws 1999, LB 550, § 147; Laws 2011, LB90, § 14; Laws 2012, LB1031, § 1.

#### **9-506 Effect of errors or omissions.**

(a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

**Source:** Laws 1999, LB 550, § 150; Laws 2008, LB308A, § 1; Laws 2008, LB851, § 28; Laws 2009, LB87, § 1; Laws 2010, LB751, § 1; Laws 2011, LB90, § 15.

**9-507 Effect of certain events on effectiveness of financing statement.**

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9-506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under section 9-503(a) so that the financing statement becomes seriously misleading under section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

**Source:** Laws 1999, LB 550, § 151; Laws 2011, LB90, § 16.

**9-510 Effectiveness of filed record.**

(a) A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509 or by the filing office under section 9-513A.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

**Source:** Laws 1999, LB 550, § 154; Laws 2013, LB210, § 3.

**9-513A Unauthorized financing statement filings; procedures; remedies.**

(a) An individual personally, or as a representative of an organization, may file in the filing office a notarized affidavit, signed under penalty of perjury, that identifies a filed financing statement and states that:

(1) the individual or organization is identified as a debtor in the financing statement;

(2) the financing statement was not filed by a financial institution or a representative of a financial institution or by an agricultural input supplier or a representative of an agricultural input supplier; and

(3) the financing statement was filed by a person not entitled to do so under section 9-509, 9-708, or 9-808.

(b) An affidavit filed under subsection (a) shall include any pertinent information that the office of the Secretary of State may reasonably require.

(c) An affidavit may not be filed under subsection (a) with respect to a financing statement filed by a financial institution or a representative of a



financial institution or by an agricultural input supplier or a representative of an agricultural input supplier.

(d) If an affidavit is filed under subsection (a), the filing office may file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must indicate that it was filed pursuant to this section. Except as provided in subsections (g) and (h), a termination statement filed under this subsection shall take effect thirty days after it is filed.

(e) On the same day that the filing office files a termination statement under subsection (d), it shall send to each secured party of record identified in the financing statement a notice advising the secured party of record that the termination statement has been filed. The notice shall be sent by certified mail, return receipt requested, to the mailing address provided for the secured party of record.

(f) A secured party of record identified in a financing statement as to which a termination statement has been filed under subsection (d) may bring an action within twenty business days after the termination statement is filed against the individual who filed the affidavit under subsection (a) seeking a determination as to whether the financing statement was filed by a person entitled to do so under section 9-509, 9-708, or 9-808. An action under this subsection shall have priority on the court's calendar and shall proceed by expedited hearing. The action shall be brought in the district court of the county where the filing office in which the financing statement was filed is located.

(g) In an action brought pursuant to subsection (f), a court may, in appropriate circumstances, order preliminary relief, including, but not limited to, an order precluding the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. If the court issues such an order and the filing office receives a certified copy of the order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall promptly file an amendment to the financing statement that indicates that an order has prevented the termination statement from taking effect. If such an order ceases to be effective by reason of a subsequent order or a final judgment of the court or by an order issued by another court and the filing office receives a certified copy of the subsequent judgment or order, the termination statement shall become immediately effective upon receipt of the certified copy and the filing office shall promptly file an amendment to the financing statement indicating that the termination statement is effective.

(h) If a court determines in an action brought pursuant to subsection (f) that the financing statement was filed by a person entitled to do so under section 9-509, 9-708, or 9-808 and the filing office receives a certified copy of the court's final judgment or order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall remove the termination statement and any amendments filed under subsection (g) from the files. If the filing office receives the certified copy after the termination statement takes effect and within thirty days after the final judgment or order was entered, the filing office shall promptly file an amendment to the financing statement that indicates that the financing statement has been reinstated.

(i) Except as provided in subsection (j), upon the filing of an amendment reinstating a financing statement under subsection (h) the effectiveness of the financing statement is retroactively reinstated and the financing statement shall

be considered never to have been ineffective against all persons and for all purposes.

(j) A financing statement whose effectiveness was terminated under subsection (d) and has been reinstated under subsection (h) shall not be effective as against a person that purchased the collateral in good faith between the time the termination statement was filed and the time of the filing of the amendment reinstating the financing statement, to the extent that the person gave new value in reliance on the termination statement.

(k) The filing office shall not charge a fee for the filing of an affidavit or a termination statement under this section. The filing office shall not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is subsequently reinstated.

(l) Neither the filing office nor any of its employees shall be subject to liability for the termination or amendment of a financing statement in the lawful performance of the duties of the filing office under this section.

(m) The Secretary of State shall adopt and make available a form of affidavit for use under this section.

(n) For purposes of this section:

(1) Agricultural input supplier means a person regularly in the business of extending credit to agricultural producers; and

(2) Financial institution means a person that is in the business of extending credit or servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit and where applicable, holds whatever license, charter, or registration that is required to engage in such business. The term includes banks, savings associations, building and loan associations, consumer and commercial finance companies, industrial banks, industrial loan companies, insurance companies, investment companies, installment sellers, mortgage servicers, sales finance companies, and leasing companies.

**Source:** Laws 2013, LB210, § 4.

### **9-515 Duration and effectiveness of financing statement; effect of lapsed financing statement.**

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**Source:** Laws 1999, LB 550, § 159; Laws 2011, LB90, § 17.

#### **9-516 What constitutes filing; effectiveness of filing.**

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) in the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee;

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d); or

(8) in the case of a financing statement or an amendment to a financing statement, the same person or entity is listed as both debtor and secured party.

(c) For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514, or 9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

**Source:** Laws 1999, LB 550, § 160; Laws 2003, LB 494, § 1; Laws 2011, LB90, § 18.

### **9-518 Claim concerning inaccurate or wrongfully filed record.**

(a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 9-509(d).

(d) An information statement under subsection (c) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person’s belief that the person that filed the record was not entitled to do so under section 9-509(d).

(e) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

**Source:** Laws 1999, LB 550, § 162; Laws 2011, LB90, § 19.

Subpart 2

DUTIES AND OPERATION OF FILING OFFICE

**9-521 Uniform form of written financing statement and amendment.**

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in section 9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

\_\_\_\_\_

B. E-MAIL CONTACT AT FILER (optional)

\_\_\_\_\_

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

\_\_\_\_\_

THE ABOVE SPACE IS FOR  
FILING OFFICE USE ONLY

1. DEBTOR’S NAME - provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor’s name)

1a. ORGANIZATION’S NAME

\_\_\_\_\_

OR

1b. INDIVIDUAL’S SURNAME

FIRST PERSONAL NAME

\_\_\_\_\_

ADDITIONAL NAME(S)/INITIAL(S) THAT  
ARE PART OF THE NAME OF THIS  
DEBTOR

SUFFIX

\_\_\_\_\_

1c. MAILING ADDRESS

\_\_\_\_\_

CITY

STATE

POSTAL CODE

COUNTRY

\_\_\_\_\_

2. DEBTOR’S NAME - provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor’s name)

2a. ORGANIZATION’S NAME

\_\_\_\_\_

OR

2b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) - provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box:

Collateral is \_\_\_ held in a Trust (see Instructions) \_\_\_ being administered by a Decedent's Personal Representative.

6a. Check only if applicable and check only one box:

- \_\_\_ Public-Finance Transaction
\_\_\_ Manufactured-Home Transaction
\_\_\_ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

- \_\_\_ Agricultural Lien \_\_\_ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): \_\_\_ Lessee/Lessor \_\_\_ Consignee/Consignor \_\_\_ Seller/Buyer \_\_\_ Bailee/Bailor \_\_\_ Licensee/Li-censor

8. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT (Form UCC1)]
UCC FINANCING STATEMENT ADDENDUM
FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR (same as item 1a or 1b on Financing Statement)

9a. ORGANIZATION'S NAME

---

OR

9b. INDIVIDUAL'S SURNAME

---

FIRST PERSONAL NAME

---

ADDITIONAL NAME(S)/INITIAL(S)

---

SUFFIX

---

THE ABOVE SPACE IS FOR  
FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S NAME - provide only one Debtor name (10a or 10b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

10a. ORGANIZATION'S NAME

---

OR

10b. INDIVIDUAL'S SURNAME

---

FIRST PERSONAL NAME

---

ADDITIONAL NAME(S)/INITIAL(S) THAT  
ARE PART OF THE NAME OF THIS  
DEBTOR

---

SUFFIX

---

10c. MAILING ADDRESS

---

CITY

---

STATE

---

POSTAL CODE

---

COUNTRY

---

11. \_\_\_\_ ADDITIONAL SECURED PARTY'S NAME or \_\_\_\_ ASSIGNOR  
SECURED PARTY'S NAME - provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

---

OR

11b. INDIVIDUAL'S SURNAME

---

FIRST PERSONAL NAME

---

ADDITIONAL NAME(S)/INITIAL(S)

---

SUFFIX

---

11c. MAILING ADDRESS

---

CITY

---

STATE

---

POSTAL CODE

---

COUNTRY

---

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

---

13. \_\_\_\_ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

- \_\_\_ covers timber to be cut
- \_\_\_ covers as-extracted collateral
- \_\_\_ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

\_\_\_\_\_

16. Description of real estate:

\_\_\_\_\_

17. MISCELLANEOUS:

\_\_\_\_\_

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 9-516(b):

UCC FINANCING STATEMENT AMENDMENT  
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

\_\_\_\_\_

B. E-MAIL CONTACT AT FILER (optional)

\_\_\_\_\_

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

\_\_\_\_\_

THE ABOVE SPACE IS FOR  
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

\_\_\_\_\_

1b. \_\_\_ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. \_\_\_ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. \_\_\_ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. \_\_\_ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. \_\_\_ PARTY INFORMATION CHANGE:

Check one of these two boxes:



This Change affects \_\_\_\_ Debtor or \_\_\_\_ Secured Party of record.

AND

Check one of these three boxes to:

\_\_\_\_ CHANGE name and/or address: Complete item 6a or 6b, and item 7a or 7b and item 7c.

\_\_\_\_ ADD name: Complete item 7a or 7b, and item 7c.

\_\_\_\_ DELETE name: Give record name to be deleted in item 6a or 6b.

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

6a. ORGANIZATION'S NAME

\_\_\_\_\_

OR

6b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

\_\_\_\_\_

\_\_\_\_\_

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

7a. ORGANIZATION'S NAME

\_\_\_\_\_

OR

7b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

7c. MAILING ADDRESS

\_\_\_\_\_

\_\_\_\_\_

CITY

STATE

POSTAL CODE

COUNTRY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. \_\_\_\_ COLLATERAL CHANGE:

Also check one of these four boxes:

\_\_\_\_ ADD collateral \_\_\_\_ DELETE collateral \_\_\_\_ RESTATE covered collateral  
 \_\_\_\_ ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT - provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here \_\_\_\_ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

_____	
OR	
9b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME
_____	_____
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
_____	_____

10. OPTIONAL FILER REFERENCE DATA

\_\_\_\_\_  
 [UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]  
 UCC FINANCING STATEMENT AMENDMENT ADDENDUM  
 FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER (same as item 1a on Amendment form)

\_\_\_\_\_  
 12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

_____	
OR	
12b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME
_____	_____
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
_____	_____

THE ABOVE SPACE IS FOR  
 FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction for item 13 - insert only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

13a. ORGANIZATION'S NAME

_____	
OR	
13b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME
_____	_____
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
_____	_____

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

\_\_\_\_\_  
 15. This FINANCING STATEMENT AMENDMENT: \_\_\_\_ covers timber to be cut \_\_\_\_ covers as-extracted collateral \_\_\_\_ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

\_\_\_\_\_

## 17. Description of real estate

---

18. MISCELLANEOUS:

---

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

**Source:** Laws 2011, LB90, § 20.

**Note:** This section was repealed by Laws 2011, LB90, section 33. Laws 2011, LB90, section 20, added a new section 9-521.

**9-522 Maintenance and destruction of records.**

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

(c) Notwithstanding the provisions of this section, a record of a financing statement or amendment statement for which the place of filing was changed by Laws 1998, LB 1321, and which financing statement or amendment statement could have been continued or was continued by filing a new continuation statement pursuant to Laws 1998, LB 1321, section 110, does not have to be retained by the original filing office and may be disposed of or destroyed.

**Source:** Laws 1999, LB 550, § 166; Laws 2005, LB 451, § 2.

**9-523 Information from filing office; sale or license of records.**

(a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to section 9-519(a)(1); and

(3) the date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor;

(B) has not lapsed under section 9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under section 9-515 and a record of which is maintained by the filing office under section 9-522(a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f)(1) The Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in the office of the Secretary of State under this part, in every medium from time to time available to the filing office.

(2) Records filed in the office of the Secretary of State under this part may be made available electronically through the portal established under section 84-1204, Reissue Revised Statutes of Nebraska. For batch requests, the fee is two dollars per record accessed through the portal, except that the fee for a batch request for one thousand or more records is two thousand dollars. All fees collected pursuant to this subdivision 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 1999, LB 550, § 167; Laws 2012, LB719, § 31.

### **9-525 Fees.**

(a) The fee for filing and indexing a record under this part is:

(1) Except as provided in subdivision (a)(4) of this section, ten dollars if the record is communicated in writing and consists of one page;

(2) Except as provided in subdivision (a)(4) of this section, ten dollars plus fifty cents per page for the second page and for each additional page if the record is communicated in writing and consists of more than one page;

(3) Except as provided in subdivision (a)(4) of this section, eight dollars if the record is communicated by another medium authorized by filing-office rule; and

(4) Seventy-five dollars, plus fifty cents per page for the second and each subsequent page of the filing, if the debtor is a transmitting utility and the filing so indicates.

(b) The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) There is no fee for the filing of a termination statement.

(d)(1) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is four dollars and fifty cents.

(2) Of the fees received pursuant to this subsection by the Secretary of State, one dollar of each fee shall be remitted to the State Treasurer for credit to the Records Management Cash Fund.

**Source:** Laws 1999, LB 550, § 169; Laws 2004, LB 1099, § 3.

**9-529 Secretary of State; implementation of centralized computer system.**

(a) The Secretary of State shall implement and maintain a centralized computer system for the accumulation and dissemination of information relative to financing statements for any type of collateral except collateral described in section 9-501(a)(1). Such a system shall include the entry of information into the computer system by the Secretary of State pursuant to section 9-530 and the dissemination of such information by a computer system or systems, telephone, mail, and such other means of communication as may be deemed appropriate. Such system shall be an interactive system.

(b) Computer access to information regarding obligations of debtors shall be made available twenty-four hours a day on every day of the year. The Secretary of State shall provide information from the system by telephone during normal business hours.

(c) The centralized computer system implemented and maintained pursuant to this section shall include information relative to effective financing statements as provided in sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, and statutory liens as provided in sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

**Source:** Laws 1999, LB 550, § 173; Laws 2003, LB 4, § 8; Laws 2007, LB124, § 72.

**9-530 Filing information; Secretary of State; duties.**

(a) Upon receipt of a financing statement relating to any collateral except collateral described in section 9-501(a)(1), the Secretary of State shall on the day of receipt enter into the centralized computer system the following document information:

(1) Identification of the document and the fact that the original document was filed with the Secretary of State;

(2) Document number;

(3) Name and address of the obligor or obligors;

(4) Name and address of the secured party or secured parties;

(5) Type or types of goods or property covered; and

(6) Date and time of filing.

(b)(1) Upon receipt of a notice of lien upon real property or a certificate or a notice affecting the lien presented for filing pursuant to the Uniform Federal Lien Registration Act or a notice of lien upon real property, release, continuation, subordination, or termination presented for filing pursuant to the Uniform State Tax Lien Registration and Enforcement Act, the Secretary of State shall on the date of receipt enter into the centralized computer system the following document information:

(i) Identification of the document and any county designated as a county in which the real property is situated;

(ii) Document number;

(iii) Type or types of property covered; and

(iv) The information entered pursuant to section 52-1003 or 77-3903, Reissue Revised Statutes of Nebraska.

(2) Upon receipt of a notice of lien upon personal property or a certificate or a notice affecting the lien filed pursuant to the Uniform Federal Lien Registration Act or a notice of lien upon personal property, release, continuation, subordination, or termination filed pursuant to the Uniform State Tax Lien Registration and Enforcement Act, the Secretary of State shall on the date of receipt enter into the centralized computer system the following document information:

(i) Identification of the document;

(ii) Document number;

(iii) Type or types of property covered; and

(iv) The information entered pursuant to section 52-1003 or 77-3903, Reissue Revised Statutes of Nebraska.

(c) The Secretary of State shall maintain the information received under subsections (a) and (b) of this section so that such information shall be available for the following types of inquiry: In person, written, and electronic media, including computers.

**Source:** Laws 1999, LB 550, § 174; Laws 2001, LB 54, § 30; Laws 2012, LB853, § 1.

#### Cross References

**Uniform Federal Lien Registration Act**, see section 52-1007.

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

### **9-531 Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees.**

(a) There is created the Uniform Commercial Code Cash Fund. Except as otherwise specifically provided, all funds received pursuant to this part and sections 52-1312, 52-1313, 52-1316, and 52-1602, Reissue Revised Statutes of Nebraska, shall be placed in the fund and used by the Secretary of State to carry out this part, the Address Confidentiality Act, sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, and sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska, except that transfers from the Uniform Commercial Code Cash Fund to the General Fund, the Election Administration Fund, and the Records Management Cash Fund may be made at the direction of the Legislature.

(b)(1) The Secretary of State shall furnish each county clerk with computer terminal hardware, including a printer, compatible with the centralized computer system implemented and maintained pursuant to section 9-529, for inquiries and searches of information in such centralized computer system. The terminals shall be readily and reasonably available and accessible to members of the public for such inquiries and searches.

(2) The fees charged by county clerks for inquiries and other services regarding information in the centralized computer system shall be the same as set forth for filing offices in this part.

**Source:** Laws 1999, LB 550, § 175; Laws 2001, LB 541, § 10; Laws 2003, LB 4, § 9; Laws 2007, LB124, § 73; Laws 2011, LB378, § 35; Laws 2017, LB280, § 5.

Cross References

Address Confidentiality Act, see section 42-1201.

Part 6

DEFAULT

Subpart 1

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

**9-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.**

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107 has the rights and duties provided in section 9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

**Source:** Laws 1999, LB 550, § 176; Laws 2005, LB 570, § 112.

### **9-607 Collection and enforcement by secured party.**

(a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under section 9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subdivision (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

**Source:** Laws 1999, LB 550, § 182; Laws 2011, LB90, § 21.



## Part 7

## TRANSITION

**9-705 Effectiveness of action taken before July 1, 2001.**

(a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this article within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) This article does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9-103, as such section existed immediately before July 1, 2001. However, except as otherwise provided in subsections (d), (e), and (f) and section 9-706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement on or after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement on or after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) Subdivision (c)(2) applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9-103, as such section existed immediately before July 1, 2001, only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Subdivision (c)(2) does not apply to a financing statement that was filed in the proper place in the state before July 1, 2001, pursuant to section 9-401, as such section existed immediately before July 1, 2001, and for which the proper place of filing in the state was not changed pursuant to section 9-501, as such section existed on July 1, 2001.

(g) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed on or after July 1, 2001, is effective

only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

**Source:** Laws 1999, LB 550, § 208; Laws 2000, LB 929, § 46; Laws 2006, LB 876, § 56.

#### **9-707 Amendment of pre-operative-date financing statement.**

(a) In this section, “pre-operative-date financing statement” means a financing statement filed before July 1, 2001.

(b) On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-operative-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-operative-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-operative-date financing statement may be amended on or after July 1, 2001, only if:

(1) the pre-operative-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) an amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-706(c); or

(3) an initial financing statement that provides the information as amended and satisfies section 9-706(c) is filed in the office specified in section 9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement may be continued only under section 9-705(d) and (g) or 9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the pre-operative-date financing statement is filed, unless an initial financing statement that satisfies section 9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

**Source:** Laws 2000, LB 929, § 47; Laws 2006, LB 876, § 57.

### Part 8

#### TRANSITION PROVISIONS FOR 2011 AMENDMENTS

##### **9-801 Operative date.**

This article as amended by Laws 2011, LB90, becomes operative on July 1, 2013.

**Source:** Laws 2011, LB90, § 22.

##### **9-802 Savings clause.**

(a) Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(b) This article as amended by Laws 2011, LB90, does not affect an action, case, or proceeding commenced before July 1, 2013.

**Source:** Laws 2011, LB90, § 23.

### **9-803 Security interest perfected before July 1, 2013.**

(a) A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this article as it existed on July 1, 2013, if, on July 1, 2013, the applicable requirements for attachment and perfection under this article as it existed on July 1, 2013, are satisfied without further action.

(b) Except as otherwise provided in section 9-805, if, immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under this article as it existed on July 1, 2013, are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under this article as it existed on July 1, 2013, are satisfied within one year after July 1, 2013.

**Source:** Laws 2011, LB90, § 24.

### **9-804 Security interest unperfected before July 1, 2013.**

A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) without further action, on July 1, 2013, if the applicable requirements for perfection under this article as it existed on July 1, 2013, are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**Source:** Laws 2011, LB90, § 25.

### **9-805 Effectiveness of action taken before July 1, 2013.**

(a) The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article as it existed on July 1, 2013.

(b) This article does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before July 1, 2013. However, except as otherwise provided in subsections (c) and (d) and section 9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had Laws 2011, LB90, not become law; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement on or after July 1, 2013, does not continue the effectiveness of the financing statement filed before July 1, 2013. However, upon the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in this article as it existed on July 1, 2013, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before July 1, 2013, only to the extent that this article as it existed on July 1, 2013, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed on or after July 1, 2013, is effective only to the extent that it satisfies the requirements of part 5 as it existed on July 1, 2013, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 9-503(a)(2) as it existed on July 1, 2013. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 9-503(a)(3) as it existed on July 1, 2013.

**Source:** Laws 2011, LB90, § 26.

### **9-806 When initial financing statement suffices to continue effectiveness of financing statement.**

(a) The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this article as it existed on July 1, 2013;

(2) the pre-operative-date financing statement was filed in an office in another state; and

(3) the initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-operative-date financing statement:

(1) if the initial financing statement is filed before July 1, 2013, for the period provided in section 9-515 as it existed before July 1, 2013, with respect to an initial financing statement; and

(2) if the initial financing statement is filed on or after July 1, 2013, for the period provided in section 9-515 as it existed on July 1, 2013, with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of part 5 as it existed on July 1, 2013, for an initial financing statement;

(2) identify the pre-operative-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-operative-date financing statement remains effective.

**Source:** Laws 2011, LB90, § 27.

#### **9-807 Amendment of pre-operative-date financing statement.**

(a) In this section, “pre-operative-date financing statement” means a financing statement filed before July 1, 2013.

(b) On or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-operative-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this article as it existed on July 1, 2013. However, the effectiveness of a pre-operative-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-operative-date financing statement may be amended on or after July 1, 2013, only if:

(1) the pre-operative-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) an amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies section 9-806(c) is filed in the office specified in section 9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement may be continued only under section 9-805(c) and (e) or 9-806.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement filed in this state may be terminated on or after July 1, 2013, by filing a termination statement in the office in which the pre-operative-date financing statement is filed, unless an initial financing statement that satisfies section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this article as it existed on July 1, 2013, as the office in which to file a financing statement.

**Source:** Laws 2011, LB90, § 28.

#### **9-808 Person entitled to file initial financing statement or continuation statement.**

A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before July 1, 2013; or

(B) to perfect or continue the perfection of a security interest.

**Source:** Laws 2011, LB90, § 29.

**9-809 Priority.**

This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this article as it existed before July 1, 2013, determines priority.

**Source:** Laws 2011, LB90, § 30.

**ARTICLE 10**

**EFFECTIVE DATE AND REPEALER**

Section

10-104. Repealed. Laws 2005, LB 570, § 116.

**10-104 Repealed. Laws 2005, LB 570, § 116.**

## APPENDIX

## CLASSIFICATION OF PENALTIES

## CLASS I FELONY

**Death**

28-303 Murder in the first degree

## CLASS IA FELONY

**Life imprisonment (persons 18 years old or older)****Maximum for persons under 18 years old—life imprisonment****Minimum for persons under 18 years old—forty years' imprisonment**

28-202 Criminal conspiracy to commit a Class IA felony  
 28-303 Murder in the first degree  
 28-313 Kidnapping  
 28-391 Murder of an unborn child in the first degree  
 28-1223 Using explosives to damage or destroy property resulting in death  
 28-1224 Using explosives to kill or injure any person resulting in death

## CLASS IB FELONY

**Maximum—life imprisonment****Minimum—twenty years' imprisonment**

28-111 Sexual assault of a child in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person  
 28-111 Sexual assault of a child in the second or third degree, with prior sexual assault convictions, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person  
 28-115 Sexual assault of a child in the second or third degree, with prior sexual assault conviction, committed against a pregnant woman  
 28-115 Sexual assault of a child in the first degree committed against a pregnant woman  
 28-202 Criminal conspiracy to commit a Class IB felony  
 28-304 Murder in the second degree  
 28-319.01 Sexual assault of a child in the first degree  
 28-319.01 Sexual assault of a child in the first degree with prior sexual assault conviction  
 28-392 Murder of an unborn child in the second degree  
 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of 140 grams or more  
 28-416 Offenses relating to amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities  
 28-416 Offenses relating to amphetamine or methamphetamine in a quantity of 28 grams or more involving minors or near youth facilities

APPENDIX

**CLASS IB FELONY**

- 28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of amphetamine or methamphetamine in a quantity of at least 28 grams
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of 140 grams or more
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of 140 grams or more
- 28-416 Offenses relating to cocaine or base cocaine (crack) in a quantity of 28 grams or more involving minors or near youth facilities
- 28-416 Offenses relating to cocaine or base cocaine (crack) in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
- 28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of 28 grams or more
- 28-416 Offenses relating to heroin in a quantity of 28 grams or more involving minors or near youth facilities
- 28-416 Offenses relating to heroin in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
- 28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of heroin or any mixture containing heroin in a quantity of at least 28 grams
- 28-457 Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine resulting in death
- 28-707 Child abuse committed knowingly and intentionally and resulting in death
- 28-831 Labor trafficking or sex trafficking of a minor
- 28-1206 Possession of a firearm by a prohibited person, second or subsequent offense
- 28-1356 Obtaining a real property interest or establishing or operating an enterprise by means of racketeering activity punishable as a Class I, IA, or IB felony

**CLASS IC FELONY**

**Maximum—fifty years' imprisonment**

**Mandatory minimum—five years' imprisonment**

- 28-115 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree committed against a pregnant woman
- 28-202 Criminal conspiracy to commit a Class IC felony
- 28-320.01 Sexual assault of a child in the second degree with prior sexual assault conviction



## APPENDIX

### CLASS IC FELONY

- 28-320.01 Sexual assault of a child in the third degree with prior sexual assault conviction
- 28-320.02 Sexual assault of minor or person believed to be a minor lured by electronic communication device, second offense or with previous conviction of sexual assault
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 28 grams but less than 140 grams
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of at least 28 grams but less than 140 grams
- 28-416 Offenses relating to cocaine or base cocaine (crack) in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
- 28-416 Offenses relating to heroin in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
- 28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 10 grams but less than 28 grams
- 28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of heroin or any mixture containing heroin in a quantity of at least 10 grams but less than 28 grams
- 28-416 Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405, second or subsequent offense involving minors or near youth facilities
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of at least 28 grams but less than 140 grams
- 28-416 Offenses relating to amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
- 28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams
- 28-813.01 Possession of visual depiction of sexually explicit conduct containing a child by a person with previous conviction
- 28-1205 Use of firearm to commit a felony
- 28-1212.04 Discharge of firearm within certain cities or counties from vehicle or proximity of vehicle at a person, structure, vehicle, or aircraft
- 28-1463.04 Child pornography by person with previous conviction
- 28-1463.05 Possession of child pornography with intent to distribute by person with previous conviction

## APPENDIX

### CLASS ID FELONY

#### Maximum—fifty years' imprisonment

#### Mandatory minimum—three years' imprisonment

- 28-111 Assault in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Kidnapping (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Sexual assault in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Arson in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Sexual assault of a child in the second degree, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-115 Assault in the first degree committed against a pregnant woman
- 28-115 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree committed against a pregnant woman
- 28-115 Sexual assault in the first degree committed against a pregnant woman
- 28-115 Sexual assault of a child in the second degree, first offense, committed against a pregnant woman
- 28-115 Domestic assault in the first degree, second or subsequent offense against same intimate partner, committed against a pregnant woman
- 28-115 Certain acts of assault, terroristic threats, kidnapping, or false imprisonment committed by legally confined person against a pregnant woman
- 28-202 Criminal conspiracy to commit a Class ID felony
- 28-320.02 Sexual assault of minor or person believed to be a minor lured by electronic communication device, first offense
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 10 grams but less than 28 grams
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of at least 10 grams but less than 28 grams
- 28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams

## APPENDIX

### CLASS ID FELONY

28-416	Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405, first offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of an exceptionally hazardous drug in Schedule I, II, or III of section 28-405
28-416	Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405, second or subsequent offense involving minors or near youth facilities
28-929	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree
28-1206	Possession of a firearm by a prohibited person, first offense
28-1212.02	Unlawful discharge of firearm at an occupied building, vehicle, or aircraft
28-1463.04	Child pornography by person 19 years old or older

### CLASS II FELONY

**Maximum—fifty years' imprisonment**

**Minimum—one year imprisonment**

28-111	Assault in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Manslaughter committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Arson in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the second degree committed against a pregnant woman
28-115	Assault with a deadly or dangerous weapon by a legally confined person committed against a pregnant woman
28-115	Sexual assault in the second degree committed against a pregnant woman
28-115	Sexual abuse of an inmate or parolee in the first degree committed against a pregnant woman
28-115	Sexual abuse of a protected individual, first degree, committed against a pregnant woman
28-115	Domestic assault in the first degree, first offense, committed against a pregnant woman
28-115	Domestic assault in the second degree, second or subsequent offense against same intimate partner, committed against a pregnant woman
28-201	Criminal attempt to commit a Class I, IA, IB, IC, or ID felony
28-202	Criminal conspiracy to commit a Class I or II felony

## APPENDIX

### CLASS II FELONY

28-306	Motor vehicle homicide by person driving under the influence of alcohol or drugs with prior conviction of driving under the influence of alcohol or drugs
28-308	Assault in the first degree
28-313	Kidnapping (certain situations)
28-319	Sexual assault in the first degree
28-320.01	Sexual assault of a child in the second degree, first offense
28-323	Domestic assault in the first degree, second or subsequent offense
28-324	Robbery
28-416	Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405
28-416	Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405, first offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of certain controlled substances in Schedule I, II, or III of section 28-405
28-502	Arson in the first degree
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$5,000 or more, second or subsequent offense
28-638	Criminal impersonation by providing false identification information to court or law enforcement officer, third or subsequent offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$5,000 or more, second or subsequent offense
28-707	Child abuse committed knowingly and intentionally and resulting in serious bodily injury
28-802	Pandering
28-831	Labor trafficking or sex trafficking
28-930	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree
28-933	Certain acts of assault, terroristic threats, kidnapping, or false imprisonment committed by legally confined person
28-1205	Possession of firearm during commission of a felony
28-1205	Use of deadly weapon other than a firearm to commit a felony
28-1222	Using explosives to commit a felony, second or subsequent offense
28-1223	Using explosives to damage or destroy property resulting in personal injury
28-1224	Using explosives to kill or injure any person resulting in personal injury
30-619	Willfully conceal or destroy evidence of any person's disqualification as a surrogate under the Health Care Surrogacy Act
30-3432	Sign or alter without authority or alter, forge, conceal, or destroy a power of attorney for health care or conceal or destroy a revocation with the intent and effect of withholding or withdrawing life-sustaining procedures or nutrition or hydration
60-690	Aiding or abetting a violation of Nebraska Rules of the Road

## APPENDIX

### CLASS II FELONY

- 60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fifth or subsequent offense committed with .15 gram alcohol concentration
- 70-2105 Destroy, damage, or cause loss to nuclear electrical generating facility or steal or render nuclear fuel unusable or unsafe

### CLASS IIA FELONY

**Maximum—twenty years' imprisonment**

**Minimum—none**

- 28-201 Attempt to commit a Class II felony
- 28-204 Harboring, concealing, or aiding a felon who committed a Class I, IA, IB, IC, or ID felony
- 28-305 Manslaughter
- 28-306 Motor vehicle homicide by person driving under the influence of alcohol or drugs with no prior conviction
- 28-309 Assault in the second degree
- 28-310.01 Strangulation using dangerous instrument, resulting in serious bodily injury, or after previous strangulation conviction
- 28-311 Criminal child enticement with previous conviction of enumerated crimes
- 28-311.08 Distributing or making public a recording of another without his or her consent or knowledge when in a state of undress in a place of solitude or seclusion or when the recording shows another's intimate area
- 28-320 Sexual assault in the second degree
- 28-322.02 Sexual abuse of inmate or parolee in the first degree
- 28-322.04 Sexual abuse of a protected individual in the first degree
- 28-323 Domestic assault in the first degree, first offense
- 28-323 Domestic assault in the second degree, second or subsequent offense
- 28-393 Manslaughter of unborn child
- 28-394 Motor vehicle homicide of unborn child by person driving under the influence of alcohol or drugs with prior conviction of driving under the influence
- 28-397 Assault of unborn child in the first degree
- 28-416 Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405
- 28-416 Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405, second or subsequent offense involving minors or near youth facilities
- 28-507 Burglary
- 28-518 Theft, value \$5,000 or more
- 28-603 Forgery in the second degree, face value \$5,000 or more
- 28-611 Issuing or passing bad check or other instrument, amount of \$5,000 or more
- 28-611.01 Issuing a no-account check, amount less than \$1,500 or more, second or subsequent offense
- 28-620 Unauthorized use or uses of financial transaction device, total value more than \$5,000, within six months from first unauthorized use
- 28-621 Criminal possession of four or more financial transaction devices
- 28-622 Unlawful circulation of a financial transaction device in the first degree
- 28-627 Unlawful manufacture of a financial transaction device

## APPENDIX

### CLASS IIA FELONY

28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$5,000 or more, second or subsequent offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$5,000 or more, first offense
28-703	Incest with a person under 18 years old
28-707	Child abuse committed negligently resulting in death
28-813.01	Possession by a person 19 years old or older of visual depiction of sexually explicit conduct containing a child
28-831	Knowingly benefitting from or participating in a labor trafficking or sex trafficking venture
28-912	Escape using force, threat, deadly weapon, or dangerous instrument
28-932	Assault with a deadly or dangerous weapon by a legally confined person
28-1212.03	Possession, receipt, retention, or disposal of a stolen firearm knowing or believing it to be stolen
28-1222	Using explosives to commit a felony, first offense
28-1224	Using explosives to kill or injure any person unless personal injury or death occurs
28-1463.05	Possession of child pornography with intent to distribute by person 19 years old or older
29-4011	Failure by felony sex offender to register under Sex Offender Registration Act, second or subsequent offense
60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fourth offense committed with .15 gram alcohol concentration
60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fifth or subsequent offense
60-6,197.06	Operating a motor vehicle when operator's license has been revoked for driving under the influence, second or subsequent offense

### CLASS III FELONY

**Maximum—four years' imprisonment and two years' post-release supervision or twenty-five thousand dollars' fine, or both**

**Minimum—none for imprisonment and nine months' post-release supervision if imprisonment is imposed**

8-138	Officer, agent, or employee accepting or receiving deposits on behalf of insolvent bank
8-139	Acting or attempting to act as active executive officer of a bank when license has been revoked or authority has been suspended
8-175	Banks, false entry or statements, offenses relating to records
8-224.01	Substitution or investment of estate or trust assets for or in securities of the trust company controlling the estate or trust; loans of trust company assets to trust company officials or employees
8-702	Bank continuing to do business after charter is forfeited
9-814	Altering lottery tickets to defraud under State Lottery Act
24-216	Clerk of the Supreme Court intentionally making a false report under oath, perjury
25-2310	Fraudulently invoking privilege of proceeding in forma pauperis

APPENDIX

**CLASS III FELONY**

28-107	Felony defined outside of criminal code
28-111	Terroristic threats committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Stalking, certain situations or subsequent conviction within 7 years, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	False imprisonment in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault of a child in the third degree, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault by legally confined person without a deadly weapon committed against a pregnant woman
28-115	Sexual assault of a child in the third degree, first offense, committed against a pregnant woman
28-115	Domestic assault in the second degree, first offense, committed against a pregnant woman
28-115	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree committed against a pregnant woman
28-115	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle committed against a pregnant woman
28-115	Causing serious bodily injury to a pregnant woman while driving while intoxicated
28-115	Sexual abuse of an inmate or parolee in the second degree committed against a pregnant woman
28-115	Sexual abuse of a protected individual, second degree, committed against a pregnant woman
28-115	Domestic assault in the third degree involving bodily injury, second or subsequent offense against same intimate partner, committed against a pregnant woman
28-202	Criminal conspiracy to commit a Class III felony
28-310.01	Strangulation without dangerous instrument
28-328	Performance of partial-birth abortion
28-342	Sale, transfer, distribution, or giving away of live or viable aborted child or consenting to, aiding, or abetting the same
28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405, first offense involving minors or near youth facilities
28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of controlled substances in Schedule IV or V of section 28-405
28-503	Arson in the second degree

## APPENDIX

### CLASS III FELONY

28-602	Forgery in the first degree
28-611.01	Issuing a no-account check in an amount of \$5,000 or more, first offense
28-611.01	Issuing a no-account check in an amount of \$1,500 or more, second or subsequent offense
28-625	Criminal sale of two or more blank financial transaction devices
28-631	Committing a fraudulent insurance act when the amount involved is \$5,000 or more, first offense
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$5,000 or more, first offense
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more but less than \$5,000, second or subsequent offense
28-638	Criminal impersonation by providing false identification information to court or law enforcement officer, second offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more but less than \$5,000, second or subsequent offense
28-703	Incest with a person under 18 years old
28-804	Keeping a place of prostitution used by a person under 18 years old practicing prostitution
28-912	Escape when detained or under arrest on a felony charge
28-912	Escape, public servant concerned in detention permits another to escape
28-915	Perjury and subornation of perjury
28-1102	Promoting gambling in the first degree, third or subsequent offense
28-1105.01	Gambling debt collection
28-1204.01	Unlawful transfer of a firearm to a juvenile
28-1205	Possession of deadly weapon other than a firearm during commission of a felony
28-1206	Possession of deadly weapon other than a firearm by a prohibited person
28-1207	Possession of a defaced firearm
28-1208	Defacing a firearm
28-1223	Using explosives to damage or destroy property unless personal injury or death occurs
28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value of \$5,000 or more
28-1345	Unauthorized access to a computer which causes damages of \$5,000 or more
28-1356	Obtaining a real property interest or establishing or operating an enterprise by means of racketeering activity or unlawful debt collection
28-1423	Swearing falsely regarding sales of tobacco
28-1463.04	Child pornography by person under 19 years old
30-2219	Falsifying representation under Uniform Probate Code
30-24,125	False statement regarding personal property of decedent
30-24,129	False statement regarding real property of decedent
32-1514	Forging candidate filing form for election nomination



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### CLASS III FELONY

32-1516	Forging initials or signatures on official ballots or falsifying, destroying, or suppressing candidate filing forms
32-1517	Employer penalizing employee for serving as election official
32-1522	Unlawful distribution of ballots or other election supplies by election official, printer, or custodian of supplies
38-140	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession or unauthorized operation of a credentialed business under Uniform Credentialing Act
38-1,124	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession or unauthorized operation of a credentialed business under Uniform Credentialing Act
44-10,108	Fraudulent statement in report or statement for benefits from a fraternal benefit society
54-1,123	Selling livestock without evidence of ownership
54-1,124	Branding another's livestock, defacing marks
54-1,125	Forging or altering livestock ownership document when value is \$1,000 or more
57-1211	Intentionally making false oath to uranium severance tax return or report
60-169	False statement on affidavit of affixture for mobile home or manufactured home
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-698	Motor vehicle accident resulting in serious bodily injury or death, violation of duty to stop
66-727	Violation of motor fuel tax laws when the amount involved is \$5,000 or more, provisions relating to evasion of tax, keeping books and records, making false statements
71-7462	Wholesale drug distribution in violation of Wholesale Drug Distributor Licensing Act
71-8929	Veterinary drug distribution in violation of Veterinary Drug Distribution Licensing Act
75-151	Violation by officer or agent of common carriers in consolidation or increase in stock, issuance of securities
77-5016.01	Falsifying a representation before the Tax Equalization and Review Commission
79-541	School district meeting or election, false oath
83-174.05	Failure to comply with community supervision, second or subsequent offense
83-184	Escape from custody (certain situations)

### CLASS IIIA FELONY

**Maximum—three years' imprisonment and eighteen months' post-release supervision or ten thousand dollars' fine, or both**

**Minimum—none for imprisonment and nine months' post-release supervision if imprisonment is imposed**

28-111	Arson in the third degree, damages of \$1,500 or more, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal mischief, pecuniary loss in excess of \$5,000 or substantial disruption of public communication or utility, committed against a person because of his or her race, color, religion, ancestry, national

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### CLASS IIIA FELONY

	origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Unauthorized application of graffiti, second or subsequent offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Domestic assault in the third degree in a menacing manner, committed against a pregnant woman
28-115	Assault in the third degree (certain situations) committed against a pregnant woman
28-115	Sexual assault in the third degree committed against a pregnant woman
28-115	Domestic assault in the third degree, first offense involving bodily injury, committed against a pregnant woman
28-204	Harboring, concealing, or aiding a felon who committed a Class II or IIA felony
28-306	Motor vehicle homicide by person driving in a reckless manner
28-311	Criminal child enticement
28-311.01	Terroristic threats
28-311.04	Stalking (certain situations)
28-314	False imprisonment in the first degree
28-320.01	Sexual assault of a child in the third degree, first offense
28-322.03	Sexual abuse of an inmate or parolee in the second degree
28-322.04	Sexual abuse of a protected individual in the second degree
28-323	Domestic assault in the third degree, second or subsequent offense (certain situations)
28-386	Knowing and intentional abuse, neglect, or exploitation of a vulnerable or senior adult
28-394	Motor vehicle homicide of an unborn child by person driving in a reckless manner
28-394	Motor vehicle homicide of an unborn child by person driving under the influence of alcohol or drugs with no prior conviction
28-398	Assault of an unborn child in the second degree
28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405
28-457	Permitting a child or vulnerable adult to ingest methamphetamine, second or subsequent offense
28-457	Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine causing serious bodily injury
28-634	Unlawful use or possession of an electronic payment card scanning device or encoding machine, second or subsequent offense
28-707	Child abuse committed knowingly and intentionally and not resulting in serious bodily injury or death
28-707	Child abuse committed negligently, resulting in serious bodily injury but not death
28-904	Resisting arrest, second or subsequent offense
28-904	Resisting arrest using deadly or dangerous weapon
28-931	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree

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### CLASS IIIA FELONY

- 28-931.01 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle
- 28-932 Assault by legally confined person without a deadly weapon
- 28-934 Assault with a bodily fluid against a public safety officer with knowledge that bodily fluid was infected with HIV, Hep B, or Hep C
- 28-1005 Dogfighting, cockfighting, bearbaiting, etc., promoter, owner, employee, property owner, or spectator
- 28-1009 Cruel mistreatment of animal not involving torture or mutilation, second or subsequent offense
- 28-1009 Cruel mistreatment of animal involving torture or mutilation
- 28-1009 Harassment of police animal resulting in death of animal
- 28-1204.05 Unlawful possession of a firearm by a prohibited juvenile offender, second or subsequent offense
- 28-1463.05 Possession of child pornography with intent to distribute by person under 19 years old
- 29-4011 Failure by felony sex offender to register under Sex Offender Registration Act, first offense
- 29-4011 Failure by misdemeanor sex offender to register under Sex Offender Registration Act, second or subsequent offense
- 53-180.05 Knowingly and intentionally dispensing alcohol in any manner to minors or incompetents resulting in serious bodily injury or death caused by the minors' consumption or impaired condition
- 60-690 Aiding or abetting a violation of Nebraska Rules of the Road
- 60-698 Motor vehicle accident resulting in injury other than serious bodily injury, violation of duty to stop
- 60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, third offense committed with .15 gram alcohol concentration
- 60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fourth offense committed with less than .15 gram alcohol concentration
- 60-6,198 Causing serious bodily injury to person or unborn child while driving while intoxicated
- 71-4839 Knowingly purchase or sell a body part for transplantation, therapy, research, or education if removal is to occur after death
- 71-4840 Intentionally falsifying, forging, concealing, defacing, or obliterating a document related to anatomical gifts for financial gain

### CLASS IV FELONY

**Maximum—two years' imprisonment and twelve months' post-release supervision or ten thousand dollars' fine, or both**

**Minimum—none for imprisonment and nine months' post-release supervision if imprisonment is imposed**

- 2-1825 Forge, counterfeit, or use without authorization an inspection legend or certificate of Director of Agriculture on potatoes
- 8-103 Department of Banking and Finance personnel borrowing money from certain financial institutions or aiding or abetting such violation
- 8-133 Pledging bank assets for making or retaining a deposit in bank or accepting such pledge of assets
- 8-133 Overpayment of interest to bank officer or employee

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### CLASS IV FELONY

8-133	Request or receipt of overpayment of interest by bank officer or employee
8-142	Bank officer, employee, director, or agent violating loan limits resulting in insolvency of bank
8-143.01	Illegal bank loans to executive officers, directors, or shareholders
8-147	Banks, illegal transfer of assets, limitation on amounts of loans and investments
8-1,139	Financial institutions, misappropriation of funds or assets
8-225	Trust companies, false statement or book entry, destruction or secretion of records
8-333	Building and loan association, false statement or book entry
8-1117	Violation of Securities Act of Nebraska or any rule or regulation under the act
8-1729	Willful violation of Commodity Code or rule, regulation, or order under the code
9-262	Second or subsequent violation of Nebraska Bingo Act when not otherwise specified
9-262	Specified violations of Nebraska Bingo Act
9-262	Intentionally employing or possessing device to facilitate cheating at bingo or using any fraud in connection with a bingo game, gain of \$1,500 or more
9-352	Second or subsequent violation of Nebraska Pickle Card Lottery Act when not otherwise specified
9-352	Specified violations of Nebraska Pickle Card Lottery Act
9-352	Intentionally employing or possessing device to facilitate cheating at lottery by sale of pickle cards or using any fraud in connection with such lottery, gain of \$1,500 or more
9-434	Second or subsequent violation of Nebraska Lottery and Raffle Act when not otherwise specified
9-434	Specified violations of Nebraska Lottery and Raffle Act
9-434	Intentionally employing or possessing device to facilitate cheating at lottery or raffle, or using any fraud in connection with such lottery or raffle, gain of \$1,500 or more
9-652	Second or subsequent violation of Nebraska County and City Lottery Act when not otherwise specified
9-652	Specified violations of Nebraska County and City Lottery Act
9-652	Intentionally employing or possessing device to facilitate cheating at keno, or using any fraud in connection with keno, gain of \$1,500 or more
9-814	Providing false information pursuant to State Lottery Act
10-509	Funding bonds of counties, fraudulent issue or use
11-101.02	False statement in oath of office
23-135.01	False claim against county when value is \$1,500 or more
23-3113	County purchasing agent or staff member violating County Purchasing Act
25-1630	Tampering with jury list
25-1635	Illegal disclosure of juror names
28-111	Assault in the third degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person

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### CLASS IV FELONY

- 28-111 Stalking, first offense or certain situations, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 False imprisonment in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Sexual assault in the third degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Arson in the third degree, damages \$500 or more but less than \$1,500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Criminal mischief, pecuniary loss of \$1,500 or more but less than \$5,000, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Criminal trespass in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-201 Criminal attempt to commit certain Class III or IIIA felonies
- 28-202 Criminal conspiracy to commit a Class IV felony
- 28-204 Harboring, concealing, or aiding a felon who committed a Class III or IIIA felony
- 28-204 Obstructing the apprehension of a felon who committed a felony other than a Class IV felony
- 28-205 Aiding consummation of felony
- 28-307 Assisting suicide
- 28-311.08 Knowingly recording, by video, photographic, digital, or other electronic means, another person in a state of undress without his or her consent or knowledge in a place of solitude or seclusion
- 28-311.08 Knowingly viewing another person in a state of undress as it is occurring without his or her consent or knowledge in a place of solitude or seclusion, subsequent offense
- 28-311.08 Knowingly photograph, film, record, or live broadcast an image of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public, subsequent offense
- 28-311.11 Knowingly violating a sexual assault protection order after service or notice, second violation within a twelve-month period, or any third or subsequent violation whenever committed
- 28-316 Violation of custody with intent to deprive custodian of custody of child
- 28-323 Domestic assault in the third degree by intentionally and knowingly causing bodily injury to his or her intimate partner or by threatening an intimate partner with imminent bodily injury, second or subsequent offense
- 28-332 Abortion violations

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### CLASS IV FELONY

28-335	Abortion by other than licensed physician
28-335	Physician knowingly or recklessly performs, induces, or attempts to perform or induce abortion without being physically present
28-336	Abortion by other than accepted medical procedures
28-346	Use of premature infant aborted alive for experimentation
28-3,108	Intentional or reckless performance of or attempt to perform abortion in violation of Pain-Capable Unborn Child Protection Act
28-412	Unlawful prescription of narcotic drugs for detoxification or maintenance treatment
28-416	Knowingly or intentionally unlawfully possessing controlled substance other than marijuana or synthetically produced cannabinoids
28-416	Knowingly or intentionally possessing more than one pound of marijuana
28-416	Possession of money used or intended to be used to violate provisions relating to controlled substances
28-418	Knowing or intentional violation of Uniform Controlled Substances Act
28-451	Possession of anhydrous ammonia with intent to manufacture methamphetamine
28-452	Possession of ephedrine, pseudoephedrine, or phenylpropanolamine with intent to manufacture methamphetamine
28-457	Permitting a child or vulnerable adult to inhale or have contact with methamphetamine, second or subsequent offense
28-471	Offer, display, market, advertise for sale, or sell a lookalike substance
28-504	Arson in the third degree, damages of \$1,500 or more
28-505	Burning to defraud insurer
28-508	Possession of burglar's tools
28-514	Theft of lost, mislaid, or misdelivered property when value is over \$5,000
28-516	Unauthorized use of a propelled vehicle, third or subsequent offense
28-518	Theft when value is \$1,500 or more but less than \$5,000
28-518	Theft when value is more than \$500 but less than \$1,500, second or subsequent offense
28-518	Theft when value is \$500 or less, third or subsequent offense
28-519	Criminal mischief, pecuniary loss of \$5,000 or more or substantial disruption of public communication or utility service
28-524	Unauthorized application of graffiti, second or subsequent offense
28-603	Forgery in the second degree when face value is \$1,500 or more but less than \$5,000
28-604	Criminal possession of a forged instrument prohibited by section 28-602
28-604	Criminal possession of a forged instrument prohibited by section 28-603, amount or value is \$5,000 or more
28-605	Criminal possession of written instrument forgery devices
28-611	Issuing a bad check or other order in an amount of \$1,500 or more but less than \$5,000
28-611	Issuing a bad check or other order in an amount under \$500, second or subsequent offense
28-611	Issuing or passing a bad check or other instrument in amount of \$500 or more but less than \$1,500, second or subsequent offense
28-611.01	Issuing a no-account check in an amount of \$1,500 or more but less than \$5,000, first offense

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### CLASS IV FELONY

- 28-611.01 Issuing a no-account check in an amount under \$1,500, second or subsequent offense
- 28-612 False statement or book entry in or destruction or secretion of records of financial institution or organization
- 28-619 Issuing two or more false financial statements to obtain two or more financial transaction devices
- 28-620 Unauthorized use of a financial transaction device when total value is \$1,500 or more but less than \$5,000 within a six-month period
- 28-621 Criminal possession of two or three financial transaction devices
- 28-623 Unlawful circulation of a financial transaction device in the second degree
- 28-624 Criminal possession of two or more blank financial transaction devices
- 28-625 Criminal sale of one blank financial transaction device
- 28-626 Criminal possession of a financial transaction forgery device
- 28-628 Laundering of sales forms
- 28-629 Unlawful acquisition of sales form processing services
- 28-630 Unlawful factoring of a financial transaction device
- 28-631 Committing a fraudulent insurance act when the amount involved is \$1,500 or more but less than \$5,000
- 28-631 Committing a fraudulent insurance act when the amount involved is \$500 or more but less than \$1,500, second or subsequent offense
- 28-631 Committing a fraudulent insurance act with intent to defraud or deceive
- 28-634 Unlawful use or possession of an electronic payment card scanning device or encoding machine, first offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more but less than \$5,000, first offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, second or subsequent offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$500, third or subsequent offense
- 28-638 Criminal impersonation by providing false identification information to court or law enforcement officer, first offense
- 28-639 Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more but less than \$5,000, first offense
- 28-639 Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, second or subsequent offense
- 28-639 Identity theft if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$500, third or subsequent offense

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### CLASS IV FELONY

28-640	Identity fraud, second or subsequent offense
28-706	Criminal nonsupport in violation of a court order
28-801.01	Solicitation of prostitution, second or subsequent offense
28-801.01	Solicitation of prostitution with person under 18 years old, first offense
28-804	Keeping a place of prostitution used by person 18 years old or older practicing prostitution
28-813.01	Possession by a minor of visual depiction of sexually explicit conduct containing a child
28-833	Enticement by electronic communication device
28-905	Operating a motor vehicle to avoid arrest which is a second or subsequent offense, results in death or injury, or involves willful reckless driving
28-905	Operating a boat to avoid arrest for felony
28-912	Escape (certain situations excepted)
28-912	Knowingly causing or facilitating an escape
28-912.01	Accessory to escape of juvenile from custody of Office of Juvenile Services
28-917	Bribery
28-918	Bribery of a witness
28-918	Witness accepting bribe or benefit
28-919	Tampering with witness, informant, or juror
28-920	Bribery of a juror
28-920	Juror accepting bribe or benefit
28-922	Tampering with physical evidence
28-935	Fraudulently filing a financing statement, lien, or document
28-1009	Abandonment or cruel neglect of animal resulting in serious injury, illness, or death
28-1102	Promoting gambling in the first degree, second offense
28-1202	Carrying a concealed weapon, second or subsequent offense
28-1203	Transporting or possessing a machine gun, short rifle, or short shotgun
28-1204.04	Unlawful possession of a firearm at a school
28-1204.05	Unlawful possession of a firearm by a prohibited juvenile offender, first offense
28-1215	Unlawful possession of explosive materials in the first degree
28-1217	Unlawful sale of explosives
28-1219	Explosives, obtaining a permit through false representations
28-1220	Possession of a destructive device
28-1221	Threatening the use of explosives or placing a false bomb
28-1301	Removing, abandoning, or concealing human skeletal remains or burial goods
28-1307	Sell or offer for sale diseased meat
28-1343.01	Unauthorized computer access creating grave risk of death
28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value of \$1,500 or more but less than \$5,000
28-1345	Unauthorized access to a computer causing damages of \$1,500 or more but less than \$5,000
28-1351	Unlawful membership recruitment for an organization or association engaged in criminal acts
28-1469	Operation of aircraft while under the influence of alcohol or drugs, third or subsequent offense



## APPENDIX

### CLASS IV FELONY

28-1482	Unlawful paramilitary activities
29-908	Failing to appear when on bail for felony offense
32-312	Election falsification on voter registration
32-330	Election falsification for unlawful use of list of registered voters
32-915	Election falsification on provisional ballot
32-939	Election falsification on registering or voting outside the country
32-939.02	Election falsification on ballot to vote early
32-947	Election falsification on ballot to vote early
32-949	Election falsification on ballot to vote early
32-1502	Election falsification
32-1503	Elections, unlawful registration acts
32-1504	Elections, neglect of duty, corruption, or fraud by deputy registrar
32-1508	Election registration, perjury by voter
32-1526	Fraudulent voting by election official
32-1529	Resident of another state voting in this state
32-1530	Voting by ineligible person
32-1531	Voting outside county of residence
32-1532	Aiding unlawful voting
32-1533	Procuring another to vote in county other than that of residence
32-1534	Voting more than once in same election
32-1537	Employer coercing political action of employees
32-1538	Deceiving illiterate elector
32-1539	Violations relating to ballots for early voting
32-1540	Fraudulent voting
32-1541	Making fraudulent entry in list of voters book
32-1542	Unlawful possession of list of voters book, official summary, or election returns
32-1543	Obtaining or attempting to obtain or destroy ballot boxes or ballots by improper means
32-1544	Destruction or falsification of election materials
32-1545	Disclosing election returns before polls have closed or without authorization from election officials
32-1546	Offering or receiving money for signing petitions or falsely swearing to circulator's affidavit on petition
32-1551	Special elections by mail, specified violations
37-554	Prohibited use of explosives or poisons in waters of state
37-1288	Forgery of motorboat title or certificate or use of false name in bill of sale or sworn statement of ownership
37-1298	Knowingly transfer motorboat without salvage certificate of title
38-1,117	False or forged document or fraud in procuring license, certificate, or registration to practice a health profession, aiding or abetting person practicing without a credential, or impersonating a credentialed person
38-2052	Person purporting to be a physician's assistant when not licensed
38-3130	Psychologist filing false diploma, license of another, or forged affidavit of identification
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case with a prior conviction for violating a protection order
44-165	Financial conglomerate or its directors, officers, employees, or agents violating supervision requirements

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### CLASS IV FELONY

44-3,121	Borrowing or rental of securities of insurance company by member, director, or attorney
44-2146	Willful violation of Insurance Holding Company System Act
44-2147	Willful filing of false report under Insurance Holding Company System Act
45-191.03	Loan broker collecting advance fee in excess of \$300 and other violations of loan broker provisions
45-926	Operating delayed deposit services business without license
46-155	Irrigation districts, officers interested in contracts, accepting bribes or gratuities
48-654.01	Engaging in business practices to avoid higher combined tax rates under the Employment Security Law
49-1476.01	Campaign contributions or expenditures by state lottery contractor
49-14,134	Filing false statement, report, or verification under Nebraska Political Accountability and Disclosure Act
49-14,135	Perjury before Nebraska Accountability and Disclosure Commission
53-1,100	Manufacturing spirits without a license, second or subsequent offense
54-1,125	Using false document of livestock ownership
54-1,125	Forging or altering livestock ownership document when value is over \$300 but less than \$1,000
54-622.01	Owner of dangerous dog which inflicts serious bodily injury, second or subsequent offense
54-753.05	Importation of livestock in violation of an embargo issued by State Veterinarian
54-903	Intentionally, knowingly, or recklessly abandon or cruelly neglect livestock animal resulting in serious injury or illness or death of the livestock animal
54-903	Cruelly mistreat a livestock animal, second or subsequent offense
54-1808	Violation of Nebraska Livestock Sellers Protective Act
54-1913	Violation of Nebraska Meat and Poultry Inspection Law with intent to defraud or by distributing adulterated article
57-719	Preparation or presentation of false or fraudulent oil and gas severance tax document
59-801	Unlawful restraint of trade or commerce
59-802	Unlawful monopolizing of trade or commerce
59-805	Unlawful restraint of trade; underselling
59-815	Corporation or other association engaged in unlawful restraint of trade
59-825	Refusal to attend and testify in restraint of trade proceedings
59-1522	Unlawful sale and distribution of cigarettes
59-1757	Violations in sales or leases of seller-assisted marketing plans
60-176	Knowing transfer of wrecked, damaged, or destroyed motor vehicle, all-terrain vehicle, or minibike without appropriate certificate of title
60-179	Fraud or forgery in obtaining certificate of title to motor vehicle, all-terrain vehicle, or minibike
60-196	Violating laws relating to odometers
60-492	Impersonating an officer under Motor Vehicle Operator's License Act
60-4,111.01	Trade, sell, or share machine-readable information encoded on driver's license or state identification card
60-4,111.01	Compile, store, or preserve machine-readable information encoded on driver's license or state identification card without authorization

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**CLASS IV FELONY**

60-4,111.01	Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number from machine-readable information encoded on driver's license or state identification card or wrongfully certifying the software
60-4,111.01	Retailer or seller knowingly storing more information than authorized from the machine-readable information encoded on driver's license or state identification card
60-4,111.01	Unauthorized trading, selling, sharing, use for marketing or sales, or reporting of scanned, compiled, stored, or preserved machine-readable information encoded on driver's license or state identification card
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-6,197.06	Operating a motor vehicle when operator's license has been revoked for driving under the influence, first offense
60-6,211.11	Operating a motor vehicle while under the influence after tampering with or circumventing an ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or operating a motor vehicle while under the influence which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order
60-1416	Acting as auction, motor vehicle, motorcycle, trailer, or wrecker or salvage dealer, manufacturer, factory representative, or distributor without license
60-2912	Misrepresenting identity or making false statement on application submitted under Uniform Motor Vehicle Records Disclosure Act
66-727	Violations of motor fuel tax laws when the amount involved is less than \$5,000, provisions relating to evasion of tax, keeping books and records, making false statements
66-727	Violations of motor fuel tax laws, including making returns and reports, assignment of licenses and permits, payment of tax
66-1226	Selling automotive spark ignition engine fuels not within specifications, second or subsequent offense
66-1822	False or fraudulent entries in books of a jurisdictional utility
68-1017	Obtaining through fraud assistance to aged, blind, or disabled persons, aid to dependent children, or supplemental nutrition assistance program benefits when value is \$1,500 or more
68-1017.01	Unlawful use, alteration, or transfer of supplemental nutrition assistance program benefits when value is \$1,500 or more
68-1017.01	Unlawful possession or redemption of supplemental nutrition assistance program benefits when value is \$1,500 or more
68-1017.01	Unlawful possession of blank supplemental nutrition assistance program authorizations
69-109	Sale or transfer of personal property with security interest without consent
69-2408	Providing false information on an application for a certificate to purchase a handgun
69-2420	Unlawful acts relating to purchase of a handgun
69-2421	Unlawful sale or delivery of a handgun
69-2422	Knowingly and intentionally obtaining a handgun for purposes of unlawful transfer of the handgun
69-2430	Falsified concealed handgun permit application

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**CLASS IV FELONY**

69-2709	Knowingly submit false information regarding cigarette and tobacco sales
70-508	False statement on sale, lease, or transfer of public electric plant
70-511	Excessive promotion expenses on sale of public electric plant
70-514	Failure to file statement of expenditures related to transfer of electric plant facilities or filing false statement
70-2104	Damage, injure, destroy, or attempt to damage, injure, or destroy equipment or structures owned and used by public power suppliers to generate, transmit, or distribute electricity or otherwise interrupt the generation, transmission, or distribution of electricity by a public power supplier
71-649	Vital statistics, unlawful acts
71-2228	Illegal receipt of food supplement benefits when value is \$1,500 or more
71-2229	Unlawful use, alteration, or transfer of food instruments or food supplements when value is \$1,500 or more
71-2229	Unlawful possession or redemption of food supplement benefits when value is \$1,500 or more
71-2229	Unlawful possession of blank authorization to participate in the WIC program or CSF program
71-6312	Unlawfully engaging in an asbestos project without a valid license or using unlicensed employees subsequent to the levy of a civil penalty, second or subsequent offense
71-6329	Engaging in a lead abatement project or lead-based paint profession without a valid license or using unlicensed employees after assessment of a civil penalty, second or subsequent offense
71-6329	Conducting a lead abatement project or lead-based paint profession training program without departmental accreditation after assessment of a civil penalty, second or subsequent offense
71-6329	Issuing fraudulent licenses under Residential Lead-Based Paint Professions Practice Act after assessment of a civil penalty, second or subsequent offense
75-909	Violation of Grain Dealer Act
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of \$1,500 or more or substantial disruption of service
76-2728	Violation of Nebraska Foreclosure Protection Act
77-2310	Unlawful removal of state funds or illegal profits by State Treasurer
77-2323	Violation of provisions on deposit of county funds
77-2325	Unlawful removal of county funds or illegal profits by county treasurers
77-2381	Violation of provisions on deposit of local hospital district funds
77-2383	Unlawful removal of funds or illegal profits by secretary-treasurer of local hospital district
77-2614	Altered, forged, or counterfeited stamp, license, permit, or cigarette tax meter impression for sale of cigarettes
77-2615	Violation of cigarette tax provisions when not otherwise specified
77-2615	Evasion of cigarette tax provisions, affixing unauthorized stamp, or sales or possession of cigarettes of manufacturer not in directory
77-2713	Failure to collect or false returns on sales and use tax
77-27,113	Evasion of income tax
77-27,114	Failure to collect or account for income taxes
77-27,116	False return on income tax

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**CLASS IV FELONY**

77-27,119	Unauthorized disclosure of confidential tax information by current or former officers or employees of the Auditor of Public Accounts or the office of Legislative Audit
77-4024	Violation of Tobacco Products Tax Act or evasion of act
77-4309	Dealer distributing or possessing marijuana or a controlled substance without affixing the official stamp, label, or other indicium
77-5544	Unlawful disclosure of confidential information by qualified independent accounting firm under Invest Nebraska Act
81-161.05	Material division personnel having financial or beneficial personal interest or receiving gifts or rebates
81-1108.56	State building division personnel having financial or beneficial personal interest or receiving gifts or rebates
81-1508.01	Specific violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act
81-15,111	Violation of Low-Level Radioactive Waste Disposal Act
81-3442	Violation of Engineers and Architects Regulation Act, second or subsequent offense
83-174.05	Failure to comply with community supervision, first offense
83-184	Escape from custody (certain situations)
83-198	Threatening or attempting to influence a member or an employee of the Board of Parole
83-1,127.02	Operation of vehicle while under the influence with disabled, bypassed, or altered ignition interlock device or without an ignition interlock device or permit in violation of board order
83-1,133	Threatening or attempting to influence a member of the Board of Pardons
83-417	Allowing a committed offender to escape or be visited without approval
83-443	Financial interest in convict labor
83-912	Director or employee of Department of Correctional Services receiving prohibited gift or gratuity
86-290	Intercepting or interfering with wire, electronic, or oral communication
86-295	Unlawful tampering with communications equipment or transmissions
86-296	Shipping or manufacturing devices capable of intercepting certain communications
86-2,102	Interference with satellite transmissions or operation
86-2,104	Unauthorized access to electronic communication services
87-303.09	Violation of court order or written assurance of voluntary compliance under Uniform Deceptive Trade Practices Act
88-543	Issuing a receipt for grain not received, improperly recording grain as received or loaded, or creating a post-direct delivery storage position without proper documentation or grain in storage
88-545	Violation of Grain Warehouse Act when not otherwise specified

**UNCLASSIFIED FELONIES, see section 28-107**

69-110	Removal from county of personal property subject to a security interest with intent to deprive of security interest –fine of not more than one thousand dollars –imprisonment of not more than ten years
77-27,119	Unauthorized disclosure of confidential tax information by Tax Commissioner, officer, employee, or third-party auditor

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### UNCLASSIFIED FELONIES, see section 28-107

- fine of not less than one hundred dollars nor more than five hundred dollars
- imprisonment of not more than five years
- both
- 77-3210 Receipt of profit from rental, management, or disposition of Land Reutilization Authority lands
- imprisonment of not less than two years nor more than five years
- 83-1,124 Parolee leaving state without permission
- imprisonment of not more than five years

### OTHER MANDATORY MINIMUMS:

- 29-2221 Habitual criminal

### CLASS I MISDEMEANOR

**Maximum—not more than one year imprisonment, or one thousand dollars’ fine, or both**

**Minimum—none**

- 2-1215 Conducting horseracing or betting on horseraces without license or violating horseracing provisions
- 2-1218 Drugging horses or permitting drugged horses to run in a horserace
- 2-2647 Violation of Pesticide Act, second or subsequent offense
- 8-119 Officers of corporation filing false statement for banking purposes
- 8-142 Bank officer, employee, director, or agent violating loan limits by \$40,000 or more or resulting in monetary loss of over \$20,000 to bank
- 8-145 Improper solicitation or receipt of benefits, unlawful inducement for bank loan
- 8-189 Attempting to prevent Department of Banking and Finance from taking possession of insolvent or unlawfully operated bank
- 8-1,138 Violation of a final order issued by Director of Banking and Finance
- 8-224.01 Division of fees for legal services by a trust company attorney
- 8-2745 Acting without license or intentionally falsifying records in violation of Nebraska Money Transmitters Act
- 9-230 Unlawfully conducting or awarding a prize at a bingo game, second or subsequent offense
- 9-262 Intentionally employing or possessing device to facilitate cheating at bingo or using any fraud in connection with a bingo game, gain of \$500 or more but less than \$1,500
- 9-266 Disclosure by Tax Commissioner or employee of reports or records of a licensed distributor or manufacturer under Nebraska Bingo Act
- 9-351 Unlawfully possessing pickle cards or conducting a pickle card lottery
- 9-352 Intentionally employing or possessing device to facilitate cheating at lottery by sale of pickle cards or using any fraud in connection with such lottery, gain of \$500 or more but less than \$1,500
- 9-356 Disclosure by Tax Commissioner or employee of returns or reports of licensed distributor or manufacturer under Nebraska Pickle Card Lottery Act
- 9-434 Intentionally employing or possessing device to facilitate cheating at lottery or raffle or using any fraud in connection with such lottery or raffle, gain of \$500 or more but less than \$1,500

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**CLASS I MISDEMEANOR**

- 9-652 Intentionally employing or possessing device to facilitate cheating at keno or using any fraud in connection with keno, gain of \$500 or more but less than \$1,500
- 9-653 Disclosure by Tax Commissioner or employee of reports or records of a licensed manufacturer-distributor under Nebraska County and City Lottery Act
- 9-814 Sale of lottery tickets under State Lottery Act without authorization or at other than the established price
- 9-814 Release of information obtained from background investigation under State Lottery Act
- 10-807 Misrepresentations for aid from county aid bonds
- 18-2532 Initiative and referendum, making false affidavit or taking false oath
- 18-2533 Initiative and referendum, destruction, falsification, or suppression of a petition
- 18-2534 Initiative and referendum petition, signing by person not registered to vote or paying for or deceiving another to sign a petition
- 18-2535 Initiative and referendum, failure by city clerk to comply or unreasonable delay in complying with statutes
- 20-334 Willful failure to obey a subpoena or order or intentionally mislead another in proceedings under Nebraska Fair Housing Act
- 20-344 Coerce, intimidate, threaten, or interfere with the exercise or enjoyment of rights under Nebraska Fair Housing Act
- 20-411 Physician or health care provider failing to transfer care of patient under declaration or living will
- 20-411 Physician failing to record a living will or a determination of a terminal condition or persistent vegetative state
- 20-411 Concealing, canceling, defacing, obliterating, falsifying, or forging a living will
- 20-411 Concealing, falsifying, or forging a revocation of a living will
- 20-411 Requiring or prohibiting a living will for health care services or insurance
- 20-411 Coercing or fraudulently inducing an individual to make a living will
- 21-212 Signing a false document under Nebraska Model Business Corporation Act with intent to file with the Secretary of State
- 21-1912 Signing a false document under Nebraska Nonprofit Corporation Act with intent to file with the Secretary of State
- 28-107 Misdemeanor defined outside of criminal code
- 28-111 Arson in the third degree, damages less than \$500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Assault in the third degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Criminal mischief, pecuniary loss of \$500 or more but less than \$1,500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Criminal trespass in the second degree (certain situations) committed against a person because of his or her race, color, religion, ancestry,

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### CLASS I MISDEMEANOR

	national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the third degree (certain situations) committed against a pregnant woman
28-201	Criminal attempt to commit a Class IV felony
28-204	Harboring, concealing, or aiding a felon who committed a Class IV felony
28-204	Obstructing the apprehension of a felon who committed a Class IV felony
28-301	Compounding a felony
28-306	Motor vehicle homicide by person not under the influence of alcohol or drugs or not driving in a reckless manner
28-310	Assault in the third degree (certain situations)
28-311.04	Stalking (certain situations)
28-311.08	Knowingly viewing another person in a state of undress as it is occurring without his or her consent or knowledge in a place of solitude or seclusion, first offense
28-311.08	Knowingly photograph, film, record, or live broadcast an image of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public, first offense
28-311.11	Knowingly violating a sexual assault protection order after service or notice, first violation or second violation more than twelve months after first violation
28-315	False imprisonment in the second degree
28-320	Sexual assault in the third degree
28-323	Domestic assault in the third degree by intentionally and knowingly causing bodily injury to his or her intimate partner or by threatening an intimate partner with imminent bodily injury, first offense
28-323	Domestic assault in the third degree by threatening an intimate partner in a menacing manner
28-394	Motor vehicle homicide of an unborn child by person not under the influence of alcohol or drugs or not driving in a reckless manner
28-399	Assault of an unborn child in the third degree
28-443	Delivering drug paraphernalia to a minor
28-457	Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine, first offense
28-504	Arson in the third degree, damages \$500 or more but less than \$1,500
28-514	Theft of lost, mislaid, or misdelivered property when value is \$1,500 or more but not more than \$5,000
28-514	Theft of lost, mislaid, or misdelivered property when value is more than \$500 but less than \$1,500, second or subsequent offense
28-514	Theft of lost, mislaid, or misdelivered property when value is \$500 or less, third or subsequent offense
28-516	Unauthorized use of a propelled vehicle, second offense
28-518	Theft when value is more than \$500 but less than \$1,500
28-518	Theft when value is \$500 or less, second offense
28-519	Criminal mischief, pecuniary loss of \$1,500 or more but less than \$5,000
28-520	Criminal trespass in the first degree
28-523	Littering, third or subsequent offense



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### CLASS I MISDEMEANOR

28-603	Forgery in the second degree when face value is \$500 or more but less than \$1,500
28-604	Criminal possession of a forged instrument prohibited by section 28-603, value is \$1,500 or more but less than \$5,000
28-607	Making, using, or uttering of slugs of value of \$100 or more
28-610	Impersonating a peace officer
28-611	Issuing a bad check or other order in an amount of \$500 or more but less than \$1,500, first offense
28-611.01	Issuing a no-account check in an amount of \$500 or more but less than \$1,500, first offense
28-613	Commercial bribery or breach of duty to act disinterestedly
28-616	Altering an identification number
28-617	Receiving an altered article
28-619	Issuing a false financial statement to obtain a financial transaction device
28-620	Unauthorized use of a financial transaction device when total value is \$500 or more but less than \$1,500 within a six-month period
28-624	Criminal possession of a blank financial transaction device
28-631	Possessing fake or counterfeit insurance policies, certificates, identification cards, or binders with intent to defraud or deceive
28-631	Committing a fraudulent insurance act when the amount involved is \$500 or more but less than \$1,500, first offense
28-633	Printing more than the last 5 digits of a payment card account number upon a receipt provided to payment card holder, second or subsequent offense
28-635	Install object or material not designed for motor vehicle air bag system
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, first offense
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$500, second offense
28-638	Criminal impersonation by providing false identification information to employer to obtain employment, second or subsequent offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, first offense
28-639	Identity theft if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$500, second offense
28-640	Identity fraud, first offense
28-701	Bigamy
28-705	Abandonment of spouse, child, or dependent stepchild
28-707	Child abuse committed negligently, not resulting in serious bodily injury or death
28-709	Contributing to the delinquency of a child

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### CLASS I MISDEMEANOR

28-801	Prostitution by person 18 years old or older, third or subsequent offense
28-801.01	Solicitation of prostitution with person 18 years old or older, first offense
28-805	Debauching a minor
28-808	Obscene literature and material, sell or possess with intent to sell to minor
28-809	Obscene motion picture, show, or presentation, admission of minor
28-813	Prepare, distribute, order, produce, exhibit, or promote obscene literature or material
28-901	Obstructing government operations
28-904	Resisting arrest, first offense
28-905	Operating a motor vehicle to avoid arrest which is a first offense, does not result in death or injury, or does not involve willful reckless driving
28-905	Operating a boat to avoid arrest for misdemeanor or ordinance violation
28-906	Obstructing a peace officer, judge, or police animal
28-907	False reporting (certain situations)
28-908	Interference with firefighter on official duty
28-909	Falsifying records of a public utility
28-913	Introducing escape implements
28-915.01	False statement under oath or affirmation or in an unsworn declaration under Uniform Unsworn Foreign Declarations Act in an official proceeding or to mislead a public servant
28-934	Assault with a bodily fluid against a public safety officer without knowledge regarding whether bodily fluid was infected with HIV, Hep B, or Hep C
28-1005.01	Knowing or intentional ownership or possession of animal fighting paraphernalia for dogfighting, cockfighting, bearbaiting, or pitting an animal against another
28-1009	Abandonment or cruel neglect of animal not resulting in serious injury, illness, or death
28-1009	Cruel mistreatment of animal not involving torture or mutilation, first offense
28-1019	Violation of court order related to felony animal abuse conviction
28-1102	Promoting gambling in the first degree, first offense
28-1202	Carrying a concealed weapon, first offense
28-1204	Unlawful possession of a handgun
28-1216	Unlawful possession of explosive materials in the second degree
28-1218	Use of explosives without a permit if not eligible for a permit
28-1254	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug with person under 16 years old as passenger
28-1302	Concealment of death to prevent determination of cause or circumstances of death
28-1312	Interfering with the police radio system
28-1343.01	Unauthorized computer access creating risk to public health and safety
28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value of \$500 or more but less than \$1,500
28-1345	Unauthorized access to a computer which causes damages of \$500 or more but less than \$1,500
28-1346	Unauthorized access to or use of a computer to obtain confidential information, second or subsequent offense

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### CLASS I MISDEMEANOR

29-1926	Improper release or use of a videotape of a child victim or child witness
30-619	Willfully without authorization alter, forge, conceal, or destroy evidence of an advance health care directive, appointment of a guardian or agent, or evidence of disqualification of any person as a surrogate under the Health Care Surrogacy Act
30-619	Willfully prevent transfer of an individual for failure of a health care provider to honor or cooperate with a health care decision by a surrogate under the Health Care Surrogacy Act by a physician or other health care provider
30-3432	Altering, forging, concealing, or destroying a power of attorney for health care or a revocation of a power of attorney for health care
30-3432	Physician or health care provider willfully preventing transfer of care of principal under durable power of attorney for health care
32-1518	Election officials, violation of duties imposed by election laws
32-1522	Unlawful printing, possession, or use of ballots
32-1546	Signing petition without being registered to vote
37-504	Unlawfully hunt, trap, or possess mountain sheep
37-615	Taking wildlife or applying for permit with a suspended or revoked permit
37-618	Possession of suspended or revoked permit to hunt, fish, or harvest fur
37-809	Unlawful acts relating to endangered or threatened species of wildlife or wild plants
37-1254.10	Operating a motorboat or personal watercraft while during a period of court-ordered prohibition for operating under the influence of alcohol or drugs or for refusal to submit to a chemical test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs, second or subsequent offense
37-1254.12	Operating a motorboat or personal watercraft while under the influence of alcohol or drugs or refusing to submit to a chemical test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs, second or subsequent offense
38-1,106	Disclosure of confidential complaints, investigational records, or reports regarding violation of Uniform Credentialing Act
39-310	Depositing materials on roads or ditches, third or subsequent offense
39-311	Placing burning materials or items likely to cause injury on highways, third or subsequent offense
42-113	Failing to file and record or filing false marriage certificate or illegally joining others in marriage
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case, first offense
44-10,108	Making a fraudulent statement to a fraternal benefit society
44-2007	Violation of Unauthorized Insurers Act
44-4806	Failing to cooperate with, obstructing, interfering with, or violating any order issued by the Director of Insurance under Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act
45-191.03	Loan broker collecting advance fee of \$300 or less or failing to make required filings
45-747	Engaging in mortgage banking or mortgage loan originating if convicted of certain misdemeanors or a felony
45-1015	Acting without license under Nebraska Installment Loan Act
46-1141	Unlawful tampering with or damaging chemigation equipment

## APPENDIX

### CLASS I MISDEMEANOR

48-125.01	Attempted avoidance of payment of workers' compensation benefits
48-145.01	Failure to comply with workers' compensation insurance required of employers
48-211	Failure or refusal to supply laborer's service letter
48-821	Interfere with or coerce others to strike or otherwise hinder governmental service
48-1908	Drug or alcohol tests, altering results
48-1909	Drug or alcohol tests, tampering with body fluids
48-2615	Athlete agent violating Nebraska Uniform Athlete Agents Act
48-2711	Violations relating to professional employer organizations
53-173	Unlicensed person selling a powdered alcohol product
53-180.05	Creation or alteration of identification for sale or delivery to a person under twenty-one years old
53-180.05	Dispensing alcohol in any manner to minors or incompetents not resulting in serious bodily injury or death
53-1,100	Manufacturing spirits without a license, first offense
54-1,125	Forging or altering livestock ownership document when value is \$300 or less
54-622.01	Owner of dangerous dog which inflicts serious bodily injury, first offense
54-634	Violation of Commercial Dog and Cat Operator Inspection Act
54-750	Harboring or prohibited sale of diseased animals, second or subsequent offense
54-751	Violation of rules and regulations relating to Exotic Animal Auction or Exchange Venue Act or provisions on diseased animals and disposal of carcasses, second or subsequent offense
54-752	Violation of Exotic Animal Auction or Exchange Venue Act or provisions relating to diseased animals and disposal of carcasses, second or subsequent offense
54-771	Failure by herd owner or custodian to develop or follow a herd plan relating to livestock anthrax
54-778	Failure to comply with Anthrax Control Act
54-781	Violation of Anthrax Control Act when not otherwise specified
54-903	Intentionally, knowingly, or recklessly abandon or cruelly neglect livestock animal not resulting in serious injury or illness or death of the livestock animal
54-903	Cruelly mistreat a livestock animal, first offense
54-909	Violating court order not to own or possess a livestock animal for at least five years after the date of conviction for second or subsequent offense of cruel mistreatment of an animal or for intentionally, knowingly, or recklessly abandoning or cruelly neglecting livestock animal resulting in serious injury or illness or death of the livestock animal
54-911	Intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest
54-912	Intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest
59-505	Unlawful discrimination in sales or purchases of products, commodities, or property

## APPENDIX

### CLASS I MISDEMEANOR

60-484.02	Disclosure of digital image or signature by Department of Motor Vehicles, law enforcement, or Secretary of State's office
60-4,108	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded, fourth or subsequent offense
60-559	Forging or filing a forged document for proof of financial responsibility for a motor vehicle
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-696	Second or subsequent conviction in 12 years for failure of driver to stop and report a motor vehicle accident
60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, second offense committed with .15 gram alcohol concentration
60-6,211.11	Operating a motor vehicle after tampering with or circumventing an ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or operating a motor vehicle which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order
60-6,218	Reckless driving or willful reckless driving, third or subsequent offense
60-2912	Disclosure of sensitive personal information by Department of Motor Vehicles
66-1226	Selling automotive spark ignition engine fuels not within specifications, first offense
69-2408	Intentional violation of provisions on acquisition of handguns
69-2419	Unlawful request for criminal history record check or dissemination of such information
69-2443	Refusal to allow peace officer or emergency services personnel to secure concealed handgun
69-2443	Carrying concealed handgun at prohibited site or while under the influence, second or subsequent offense
69-2443	Failure to report discharge of concealed handgun, second or subsequent offense
69-2443	Failure to carry or display concealed handgun permit, second or subsequent offense
69-2443	Failure to inform peace officer of concealed handgun, second or subsequent offense
71-458	Violation of Health Care Facility Licensure Act
71-649	Vital statistics, unlawful acts
71-1950	Violation of Children's Residential Facilities and Placing Licensure Act
71-4608	Illegal manufacture or sale of manufactured homes or recreational vehicles
71-4608	Violation of manufactured home or recreational vehicle standards endangering the safety of a purchaser
71-6312	Unlawfully engaging in an asbestos project without a valid license or using unlicensed employees subsequent to the levy of a civil penalty, first offense
71-6329	Engaging in a lead abatement project or lead-based paint profession without a valid license or using unlicensed employees after assessment of a civil penalty, first offense
71-6329	Conducting a lead abatement project or lead-based paint profession training program without departmental accreditation after assessment of a civil penalty, first offense

## APPENDIX

### CLASS I MISDEMEANOR

71-6329	Issuing fraudulent licenses under Residential Lead-Based Paint Professions Practice Act after assessment of a civil penalty, first offense
74-921	Operating a locomotive or acting as the conductor while intoxicated
75-127	Unjust discrimination or prohibited practice in rates by common carrier, shipper, or consignee
76-1315	Violation of laws on retirement communities and subdivisions
76-1722	Unlawful time-share interval disposition or violating time-share laws
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of \$500 or more but less than \$1,500 (certain situations)
77-1816	Fraudulent sales of real property for delinquent real estate taxes
77-2115	Disclosure of confidential information on estate or generation-skipping transfer tax records
77-2326	Failure to act regarding deposit of county funds by county treasurers
77-2384	Secretary-treasurer of local hospital district, failure to comply with provisions on deposit of public funds
77-2704.33	Failure of a contractor or taxpayer to pay certain sales taxes of \$300 or more
77-2711	Wrongful disclosure of records and reports relating to sales and use tax
77-2711	Disclosure of taxpayer information by employees or former employees of the office of Legislative Audit or the Auditor of Public Accounts or certain municipalities
77-3522	Oath or affirmation regarding false or fraudulent application for homestead exemption
77-5016	False statement to Tax Equalization and Review Commission
81-829.73	Fraudulently or willfully making a misstatement of fact in connection with an application for financial assistance under Emergency Management Act
81-1508.01	Violations of solid waste and livestock waste laws and regulations
81-1717	Unlawful soliciting of professional services under Nebraska Consultants' Competitive Negotiation Act
81-1718	Professional making unlawful solicitation under Nebraska Consultants' Competitive Negotiation Act
81-1719	Agency official making unlawful solicitation under Nebraska Consultants' Competitive Negotiation Act
81-1830	False claim under Nebraska Crime Victim's Reparations Act
81-2143	Violation of State Electrical Act
81-3442	Violation of Engineers and Architects Regulation Act, first offense
81-3535	Unauthorized practice of geology, second or subsequent offense
83-1,127.02	Operation of vehicle with disabled, bypassed, or altered ignition interlock device or without an ignition interlock device or permit in violation of board order
86-234	Violation of Telemarketing and Prize Promotions Act
86-290	Intercepting or interfering with certain wire, electronic, or oral communication
86-298	Unlawful use of pen register or trap-and-trace device
86-2,104	Unlawful access to electronic communication service
88-548	Illegal use of grain probes
89-1,101	Violation of Weights and Measures Act or order of Department of Agriculture, second or subsequent offense

APPENDIX

**CLASS II MISDEMEANOR**

**Maximum—six months' imprisonment, or one thousand dollars' fine, or both**

**Minimum—none**

1-166	Accountants, persons using titles, initials, trade names when not qualified or authorized to do so
2-10,115	Specified violations of Plant Protection and Plant Pest Act, second or subsequent offense
2-1221	Receipt or delivery of certain off-track wagers
2-1811	Violation of Nebraska Potato Development Act
2-4327	Violation of Agricultural Liming Materials Act, second or subsequent offense
3-152	Violation of State Aeronautics Act or any related rules, regulations, or orders
8-109	Financial institution examiner failing to report bank insolvency or unsafe condition
8-118	Promoting the organization of a corporation to conduct the business of banking or selling stock prior to issuance of charter
8-142	Bank officer, employee, director, or agent violating loan limits by \$20,000 or more but less than \$40,000 or resulting in monetary loss of \$10,000 or more but less than \$20,000
9-262	Intentionally employing or possessing device to facilitate cheating at bingo or using any fraud in connection with a bingo game, gain of less than \$500
9-345.03	Unlawfully placing a pickle card dispensing device in operation
9-352	Intentionally employing or possessing device to facilitate cheating at lottery by sale of pickle cards or using any fraud in connection with such lottery, gain of less than \$500
9-434	Intentionally employing or possessing device to facilitate cheating at lottery or raffle or using any fraud in connection with such lottery or raffle, gain of less than \$500
9-513	Violation of Nebraska Small Lottery and Raffle Act, second or subsequent offense
9-652	Intentionally employing or possessing device to facilitate cheating at keno, or using any fraud in connection with keno, gain of less than \$500
9-701	Violation of provisions relating to gift enterprises
9-814	Failure by lottery game retailer to maintain and make available records of separate accounts under State Lottery Act
9-814	Knowingly sell lottery tickets to person less than 19 years old
12-1118	False or fraudulent reporting or any violation under Burial Pre-Need Sale Act
14-415	Violation of building ordinance or regulations in city of the metropolitan class, third or subsequent offense within two years of prior offense
22-303	Relocation of county seats, refusal by officers to move offices and records
23-135.01	False claim against county when value is \$500 or more but less than \$1,500
23-2325	False or fraudulent acts to defraud the Retirement System for Nebraska Counties
23-2544	Violation of county personnel provisions for counties with population under 150,000
23-3596	Board of trustees of hospital authority, pecuniary interest in contracts

## APPENDIX

### CLASS II MISDEMEANOR

24-711	False or fraudulent acts to defraud the Nebraska Judges Retirement System
28-111	Criminal mischief, pecuniary loss is less than \$500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal trespass in the second degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Unauthorized application of graffiti, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-201	Criminal attempt to commit a Class I misdemeanor
28-310	Assault in the third degree (certain situations)
28-311.06	Hazing
28-311.09	Violation of harassment protection order
28-316	Violation of custody without intent to deprive custodian of custody of child
28-339	Discrimination against person refusing to participate in an abortion
28-344	Violation of provisions relating to abortion reporting forms
28-442	Unlawful possession or manufacture of drug paraphernalia
28-445	Manufacture or delivery of an imitation controlled substance, second or subsequent offense
28-504	Third degree arson, damages less than \$500
28-511.03	Possession in store of security device countermeasure
28-514	Theft of lost, mislaid, or misdelivered property when value is more than \$500 but less than \$1,500
28-514	Theft of lost, mislaid, or misdelivered property when value is \$500 or less, second offense
28-515.01	Fraudulently obtaining telecommunications service
28-518	Theft when value is \$500 or less
28-519	Criminal mischief, pecuniary loss of \$500 or more but less than \$1,500
28-521	Criminal trespass in the second degree (certain situations)
28-523	Littering, second offense
28-603	Second degree forgery, value less than \$500
28-604	Criminal possession of a forged instrument prohibited by section 28-603, value is \$500 or more but less than \$1,500
28-607	Making, using, or uttering of slugs of value less than \$100
28-611	Issuing a bad check or other order in an amount of less than \$500, first offense
28-611	Issuing bad check or other order with insufficient funds
28-611.01	Issuing a no-account check in an amount of less than \$500, first offense
28-614	Tampering with a publicly exhibited contest
28-620	Unauthorized use of a financial transaction device when total value is less than \$500 within a six-month period
28-631	Committing a fraudulent insurance act when the amount involved is less than \$500
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if no credit, money,



## APPENDIX

### CLASS II MISDEMEANOR

- goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$500, first offense
- 28-638 Criminal impersonation by providing false identification information to employer to obtain employment, first offense
- 28-639 Identity theft if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$500, first offense
- 28-706 Criminal nonsupport not in violation of court order
- 28-801 Prostitution by person 18 years old or older, first or second offense
- 28-806 Public indecency
- 28-811 Obscene literature, material, etc., false representation of age by minor, parent, or guardian, unlawful employment of minor
- 28-903 Refusing to aid a peace officer
- 28-910 Filing false reports with regulatory bodies
- 28-911 Abuse of public records
- 28-915.01 False statement under oath or affirmation or in an unsworn declaration under Uniform Unsworn Foreign Declarations Act if statement is required by law to be sworn or affirmed
- 28-924 Official misconduct
- 28-926 Oppression under color of office
- 28-927 Neglecting to serve warrant if offense for warrant is a felony
- 28-1103 Promoting gambling in the second degree
- 28-1105 Possession of gambling records in the first degree
- 28-1107 Possession of a gambling device
- 28-1218 Use of explosives without a permit if eligible for a permit
- 28-1233 Failure to notify fire protection district of use or storage of explosive material over one pound
- 28-1240 Unlawful transportation of anhydrous ammonia
- 28-1304.01 Unlawful use of liquified remains of dead animals
- 28-1311 Interference with public service companies
- 28-1326 Unlawful transfer of recorded sound
- 28-1326 Sell, distribute, circulate, offer for sale, or possess for sale recorded sounds without proper label
- 28-1343.01 Unauthorized computer access compromising security of data
- 28-1344 Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value less than \$500
- 28-1345 Unauthorized access to a computer which causes damages of less than \$500
- 28-1346 Unauthorized access to or use of a computer to obtain confidential information, first offense
- 28-1347 Unauthorized access to or use of a computer, second or subsequent offense
- 29-739 Extradition and detainer, unlawful delivery of accused persons
- 29-908 Failing to appear when on bail for misdemeanor or ordinance violation
- 30-2602.01 Violating an ex parte order regarding a ward's or protected person's safety, health, or financial welfare
- 32-1536 Bribery or threats used to procure vote of another

## APPENDIX

### CLASS II MISDEMEANOR

37-401	Violation of hunting, fishing, and fur-harvesting permits
37-410	Obtaining or aiding another to obtain a permit to hunt, fish, or harvest fur unlawfully or by false pretenses or misuse of permit
37-411	Hunting, fishing, or fur-harvesting without permit
37-447	Violation of rules, regulations, and commission orders under Game Law regarding hunting, transportation, and possession of deer
37-449	Violation of rules and regulations under Game Law regarding hunting antelope
37-479	Luring or enticing wildlife into a domesticated cervine animal facility
37-4,108	Violating commercial put-and-take fishery licensure requirements
37-504	Unlawfully hunt, trap, or possess elk
37-509	Violations relating to hunting or harassing birds, fish, or other animals from aircraft
37-524.01	Release, kill, wound, or attempt to kill or wound a pig for amusement or profit
37-554	Use of explosives in water to remove obstructions without permission
37-555	Polluting waters of state
37-556	Polluting waters of state with carcasses
37-573	Hunt or enable another to hunt through the Internet or host hunting through the Internet
37-809	Violation of restrictions on endangered or threatened species
37-1254.12	Operating a motorboat or personal watercraft while under the influence of alcohol or drugs or refusing to submit to a chemical test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs, first offense
37-1272	Reckless or negligent operation of motorboat, water skis, surfboard, etc.
37-12,110	Violation of provisions relating to abandonment of motorboats
38-1,118	Violation of Uniform Credentialing Act when not otherwise specified, second or subsequent offense
38-1,133	Failure of insurer to report violations of Uniform Credentialing Act, second or subsequent offense
38-1424	Willful malpractice, solicitation of business, and other unprofessional conduct in the practice of funeral directing and embalming
38-28,103	Violations of Pharmacy Practice Act except as otherwise specifically provided
38-3130	Representing oneself as a psychologist or practicing psychology without a license
39-310	Depositing materials on roads or ditches, second offense
39-311	Placing burning materials or items likely to cause injury on highways, second offense
39-2612	Illegal location of junkyard
42-357	Knowingly violating a restraining order relating to dissolution of marriage
42-1204	False or incorrect information on application to restrict disclosure of applicant's address
43-2,107	Violation of restraining or other court order under Nebraska Juvenile Code
44-3,156	Violations of provisions permitting purchase of workers' compensation insurance by associations
44-1209	Reciprocal insurance, violations by attorney in fact

## APPENDIX

### CLASS II MISDEMEANOR

45-208	Violation of maximum rate of time-price differential, revolving charge agreements
45-343	Installment sales, failure to obtain license
45-343	Violation of Nebraska Installment Sales Act
45-747	Engaging in mortgage banking or mortgage loan originating without a license or registration
45-814	Violation of Credit Services Organization Act
45-1037	Violations regarding installment loans
46-254	Interfering with closed waterworks, taking water without authority
46-263.01	Molesting or damaging water flow measuring devices
46-807	Unlawful diversion or drainage of natural lakes
46-1119	Violation of emergency permit provisions of Nebraska Chemigation Act
46-1139	Unlawfully engaging in chemigation without a chemigation permit
46-1140	Unlawfully engaging in chemigation with a suspended or revoked chemigation permit
46-1239	Violating the licensure requirements of Water Well Standards and Contractors' Practice Act
48-144.04	Failing, neglecting, or refusing to file reports required by Nebraska Workers' Compensation Court
48-146.03	Unlawfully requiring employee to pay deductible amount under workers' compensation policy or requiring or attempting to require employee to give up right of selection of physician
48-147	Deducting from employee's pay for workers' compensation benefits
48-311	Violation of child labor laws
48-414	Using a machine or device or working at a location which Commissioner of Labor has labeled unsafe
48-424	Violations involving health and safety regulations
48-434	Violations of safety requirements in construction of buildings
48-437	Unauthorized manipulation of overhead high voltage conductors or other components
48-645	Unlawful waiver of or deductions for unemployment compensation or discrimination in hire or tenure
48-910	Violation of laws relating to secondary boycotts
48-1714	Violation by farm labor contractor or applicant for farm labor contractor license
48-1714	Violations related to farm labor contractor licenses
48-1816	Violation of Nebraska Amusement Ride Act
48-2533	Install a conveyance in violation of Conveyance Safety Act
50-1215	Obstruct, hinder, delay, or mislead a legislative performance audit or preaudit inquiry
52-124	Failure to discharge construction liens, failure to apply payments for lawful claims
53-111	Nebraska Liquor Control Commission, gifts or gratuities forbidden
53-164.02	Evasion of liquor tax
53-186.01	Permitting consumption of liquor in unlicensed public places, second or subsequent offense
53-187	Nonbeverage liquor licensee giving or selling liquor fit for beverage purposes, second or subsequent offense
53-1,100	Violation of Nebraska Liquor Control Act, second or subsequent offense
54-1,125	Using false evidence of ownership of livestock
54-1,126	Violation of Livestock Brand Act when not otherwise specified

APPENDIX

**CLASS II MISDEMEANOR**

54-415	Estrays, illegal sale, disposition of proceeds
54-706.05	Interfere with or obstruct inspections or tests under Bovine Tuberculosis Act
54-706.08	Prevent testing of or remove animal quarantined under Bovine Tuberculosis Act
54-706.10	Interfere with or obstruct confining of affected herds or examinations or tests under Bovine Tuberculosis Act
54-706.17	Other violation of Bovine Tuberculosis Act or rules and regulations
54-750	Harboring or prohibited sale of diseased animals, first offense
54-751	Violation of rules and regulations relating to Exotic Animal Auction or Exchange Venue Act or provisions on diseased animals and disposal of carcasses, first offense
54-752	Violation of Exotic Animal Auction or Exchange Venue Act or provisions relating to diseased animals and disposal of carcasses, first offense
54-796	Violation of Animal Importation Act, second or subsequent offense
54-861	Violation of Commercial Feed Act, second or subsequent offense
54-1171	Violation of Livestock Auction Market Act
54-1181.01	Person engaging in livestock commerce violating veterinarian inspection provisions
54-1811	Illegal purchase of slaughter livestock
54-1913	Interference with inspection of meat and poultry, attempting to bribe inspector or employee of Department of Agriculture
54-1913	Violation of Nebraska Meat and Poultry Inspection Law when not otherwise specified unless intent was to defraud
54-2288	Violation of quarantine requirements under Pseudorabies Control and Eradication Act, second or subsequent offense
54-22,100	Violation of Pseudorabies Control and Eradication Act, second or subsequent offense
54-2323	Violation of Domesticated Cervine Animal Act, second or subsequent offense
54-2761	Violation of Scrapie Control and Eradication Act, second or subsequent offense
55-142	Trespassing on place of military duty, obstructing person in military duty, disrupting orderly discharge of military duty, disturbing or preventing passage of military troops
55-175	Refusal by restaurant, hotel, or public facility to serve person wearing prescribed National Guard uniform
55-428	Code of military justice, witness failure to appear
57-915	Violation of oil and gas conservation laws
60-3,167	Operating or allowing the operation of motor vehicle or trailer without proof of financial responsibility
60-4,108	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded, first, second, or third offense
60-4,109	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded for violation of city or village ordinance
60-4,141.01	Operating commercial motor vehicle while operator's license is suspended, revoked, or canceled or while subject to disqualification or an out-of-service order
60-690	Aiding or abetting a violation of Nebraska Rules of the Road

## APPENDIX

### CLASS II MISDEMEANOR

60-696	Failure of driver to stop and report a motor vehicle accident, first offense in 12 years
60-6,130	Unlawful removal or possession of sign or traffic control or surveillance device
60-6,130	Willfully or maliciously injuring, defacing, altering, or knocking down any sign, traffic control device, or traffic surveillance device
60-6,195	Speed competition or drag racing on highways
60-6,217	Reckless driving or willful reckless driving, second offense
60-6,288.01	Failure to notify local authorities prior to moving a building or object over a certain size on a county or township road
60-6,299	Violation of or failure to obtain permit to move building or other object on highway
60-6,336	Snowmobile contest on highway without permission, second or subsequent offense within one year
60-6,343	Violation of provisions relating to snowmobiles, second or subsequent offense within one year
60-6,362	Violation of all-terrain vehicle requirements, second or subsequent offense within one year
60-1911	Violating laws relating to abandoned or trespassing vehicles
69-408	Violation of secondary metals recycling requirements
69-1215	Willfully or knowingly engaging in business of debt management without license
69-1324	Willful failure to deliver abandoned property to the State Treasurer
69-2409.01	Intentionally causing the Nebraska State Patrol to request mental health history information without reasonable belief that the named individual has submitted a written application or completed a consent form for a handgun
69-2709	Knowing or intentional cigarette sales report, tax, or stamp violations or sales of unstamped cigarettes or cigarettes from manufacturer not in directory, second or subsequent offense
69-2709	Knowing or intentional cigarette sales or purchases from unlicensed stamping agent or without appropriate stamp or reporting requirements, second or subsequent offense
71-962	Filing petition with false allegations or depriving a subject of rights under Nebraska Mental Health Commitment Act or Sex Offender Commitment Act
71-962	Willful violation involving records under Nebraska Mental Health Commitment Act or Sex Offender Commitment Act
71-15,141	Approve, sign, or file a local housing agency annual report which is materially false or misleading
71-1805	Sale and distribution of pathogenic microorganisms
71-2416	Violation of Emergency Box Drug Act
71-2482	Violation involving adulterated or misbranded drugs, second or subsequent offense
71-2512	Violation of Poison Control Act when not otherwise specified, second offense
71-3213	Violation of laws pertaining to private detectives
72-245	Waste, trespass, or destruction of trees on school lands
72-313	Violation of mineral or water rights on state lands
72-802	Violation of plans, specifications, bids, or appropriations on public buildings

APPENDIX

**CLASS II MISDEMEANOR**

75-127	Unjust discrimination or prohibited practices in rates by officers, agents, or employees of a common carrier
75-428	Failure of railroad to provide transfer facilities at intersections upon order of Public Service Commission
75-723	Violation of laws on transmission lines
76-1722	Acting as a sales agent for real property in a time-share interval arrangement without a license
76-2114	Acting as membership camping contract salesperson without registration
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of at least \$200 but less than \$500 (certain situations)
77-1232	Failure to list or filing false list of personal property for tax purposes for 1993 and thereafter
77-2311	Failure or refusal to perform duties regarding deposit of state funds by State Treasurer
77-2790	Claiming excessive exemptions or overstating withholding to evade income taxes
77-27,115	Taxpayer, failure to pay, account, or keep records on income tax
77-3009	Violation of Mechanical Amusement Device Tax Act
77-3522	False or fraudulent claim for homestead exemption
79-949	False or fraudulent acts to defraud the school employees retirement system
79-992.02	False or fraudulent acts to defraud the school employees retirement system of a Class V school district
79-9,107	Illegal interest in investment of school employees retirement system funds
80-405	Obtaining veterans relief by fraud
81-2,162.17	Violation of Nebraska Commercial Fertilizer and Soil Conditioner Act
81-885.45	Acting as real estate broker, salesperson, or subdivider without license or certificate or under suspended license or certificate
81-8,254	Obstruct, hinder, or mislead Public Counsel in inquiries
81-1023	Use of improperly marked or equipped state-owned vehicle
81-1117.03	Prohibited release of state computer file data
81-1933	Truth and deception examination, unlawful use by employer
81-1935	Violation of provisions on truth and deception examinations
81-2038	False or fraudulent acts to defraud the Nebraska State Patrol Retirement System
81-3535	Unauthorized practice of geology, first offense
84-305.01	Willfully obstruct, hinder, delay, or mislead the Auditor of Public Accounts in accessing records or information of a public entity when conducting an audit, examination, or related activity
84-1327	False or fraudulent acts to defraud the State Employees Retirement System
85-1650	Violating private postsecondary career school provisions
86-607	Discrimination in rates by telegraph companies
86-608	Failure by telegraph companies to provide newspapers equal facilities
87-303.08	Violation of Uniform Deceptive Trade Practices Act when not otherwise specified

APPENDIX

**CLASS III MISDEMEANOR**

**Maximum—three months' imprisonment, or five hundred dollars' fine, or both**

**Minimum—none**

2-1825	Violation of Nebraska Potato Inspection Act
2-2319	Violation of Nebraska Wheat Resources Act
2-2647	Violation of Pesticide Act, first offense
2-3008	Violation of Nebraska Poultry Disease Control Act
2-3416	Violation of Nebraska Poultry and Egg Resources Act
2-3635	Violation of Nebraska Corn Resources Act
2-3765	Violation of Dry Bean Resources Act
2-3963	Violation of Dairy Industry Development Act
2-4020	Violation of Grain Sorghum Resources Act
2-5605	Violations relating to excise taxes on grapes
3-408	Violation of provisions regulating obstructions to aircraft by structures or towers
3-504	Violation of city airport authority regulations
3-613	Violation of county airport authority regulations
4-106	Alien elected to office in labor or educational organization
7-101	Unauthorized practice of law
8-127	Violation of inspection provisions for list of bank stockholders
8-142	Bank officer, employee, director, or agent violating loan limits by \$10,000 or more but less than \$20,000 or resulting in monetary loss of less than \$10,000 to bank or no monetary loss
8-1,119	Violation of Nebraska Banking Act when not otherwise specified
8-2745	Violation of Nebraska Money Transmitters Act, other than acting without license or intentionally falsifying records
9-230	Unlawfully conducting or awarding a prize at a bingo game, first offense
9-422	Unlawfully conducting a lottery or raffle
12-1205	Failing to report the presence and location of human skeletal remains or burial goods associated with an unmarked human burial
13-1617	Violation of confidentiality requirements of Political Subdivisions Self-Funding Benefits Act
14-224	City council, officers, and employees receiving or soliciting gifts
14-2149	Violations relating to gas and water utilities in cities of the metropolitan class
18-305	Telephone company providing special rates to city or village officer or such officer accepting special rates
18-306	Electric company providing special rates to city or village officer
18-307	City or village officer accepting electric service at special rates
18-308	Water company providing special rates to city or village officer or such officer accepting special rates
18-1741.05	Failure to appear or comply with handicapped parking citation
18-2715	Unauthorized disclosure of confidential business information under city ordinance pursuant to Local Option Municipal Economic Development Act
19-2906	Disclosures by accountant of results of examination of municipal accounts
20-129	Interfering with rights of blind, deaf, or physically disabled persons and with admittance to or enjoyment of public facilities
20-129	Interfering with rights of a service animal trainer and with admittance to or enjoyment of public facilities

## APPENDIX

### CLASS III MISDEMEANOR

21-622	Illegal use of society emblems
23-114.05	Violation of county zoning regulations
23-135.01	False claim against county when value is less than \$500
23-350	Failing to file or filing false or incorrect inventory statement by county officers or members of county board
28-201	Criminal attempt to commit a Class II misdemeanor
28-384	Failure to make report under Adult Protective Services Act
28-385	Wrongful release of information gathered under Adult Protective Services Act
28-403	Administering secret medicine
28-416	Knowingly or intentionally possessing more than one ounce but not more than one pound of marijuana
28-417	Unlawful acts relating to packaging, possessing, or using narcotic drugs and other controlled substances
28-424	Inhaling or drinking certain intoxicating compounds
28-424	Selling or offering for sale certain intoxicating compounds
28-424	Selling or offering for sale certain intoxicating compounds without maintaining register for one year
28-424	Inducing or enticing another to sell, inhale, or drink certain intoxicating compounds or to fail to maintain register for one year
28-444	Drug paraphernalia advertisement prohibited
28-445	Manufacture or delivery of an imitation controlled substance, first offense
28-450	Unlawful sale, distribution, or transfer of ephedrine, pseudoephedrine, or phenylpropanolamine for use as a precursor to a controlled substance or with reckless disregard as to its use
28-456.01	Purchase, receive, or otherwise acquire pseudoephedrine base or phenylpropanolamine base over authorized limits, second or subsequent offense
28-514	Theft of lost, mislaid, or misdelivered property when value is \$500 or less, first offense
28-515.02	Theft of utility service and interference with utility meter
28-516	Unauthorized use of a propelled vehicle, first offense
28-519	Criminal mischief, pecuniary loss of less than \$500
28-521	Criminal trespass in the second degree (certain situations)
28-523	Littering, first offense
28-524	Unauthorized application of graffiti, first offense
28-604	Criminal possession of forged instrument, face value less than \$500
28-606	Criminal simulation of antiquity, rarity, source, or composition
28-609	Impersonating a public servant
28-621	Criminal possession of one financial transaction device
28-633	Printing more than the last 5 digits of a payment card account number upon a receipt provided to payment card holder, first offense
28-717	Willful failure to report abused or neglected children
28-730	Unlawful disclosures by a child abuse and neglect team member
28-902	Failure to report a physical injury received in connection with, or as a result of, the commission of a criminal offense
28-914	Loitering about a penal institution
28-923	Simulating legal process
28-925	Misuse of official information
28-927	Neglecting to serve warrant if offense for warrant is a misdemeanor



## APPENDIX

### CLASS III MISDEMEANOR

28-928	Mutilation of a flag of the United States or the State of Nebraska
28-1009.01	Violence on or interference with a service animal
28-1010	Indecency with an animal
28-1209	Failure to register tranquilizer guns
28-1210	Failure to notify sheriff of sale of tranquilizer gun
28-1225	Storing explosives in violation of safety regulations
28-1226	Failure to report theft of explosives
28-1227	Violations of provisions relating to explosives
28-1240	Unlawful use of tank or container which contained anhydrous ammonia
28-1242	Unlawful throwing of fireworks
28-1250	Violation of laws relating to fireworks
28-1251	Unlawful testing or inspection of fire alarms
28-1303	Raising or producing stagnant water on river or stream
28-1309	Refusing to yield a telephone party line
28-1310	Intimidation by telephone call or electronic communication
28-1313	Unlawful use of a white cane or guide dog
28-1314	Failure to observe a blind person
28-1316	Unlawful use of locks and keys
28-1317	Unlawful picketing
28-1318	Mass picketing
28-1319	Interfering with picketing
28-1320	Intimidation of pickets
28-1320.03	Unlawful picketing of a funeral
28-1321	Maintenance of nuisances
28-1322	Disturbing the peace
28-1331	Unauthorized use of receptacles
28-1332	Unauthorized possession of a receptacle
28-1335	Discharging firearm or weapon using compressed gas from public highway, road, or bridge
28-1419	Selling or furnishing tobacco or cigarette, vapor, or alternative nicotine products to minors
28-1420	Sale or purchase for resale of tobacco without license
28-1425	Licensee selling or furnishing tobacco or cigarette, vapor, or alternative nicotine products to minors
28-1429.02	Dispensing cigarettes or other tobacco products or vapor or alternative nicotine products from vending machines or similar devices in certain locations
28-1429.03	Sell or distribute cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever through a self-service display
28-1467	Operation of aircraft while under the influence of alcohol or drugs, first offense
28-1468	Operation of aircraft while under the influence of alcohol or drugs, second offense
28-1478	Deceptive or misleading advertising
29-817	Disclosing of search warrant prior to its execution
29-835	Refusing to permit, interfering with, or preventing inspection pursuant to inspection warrant
29-4110	Unlawful possession of DNA samples or records
29-4111	Unlawful disclosure of DNA samples or records
32-1501	Interfering or refusing to comply with election requirements of Secretary of State

## APPENDIX

### CLASS III MISDEMEANOR

32-1505	Deputy registrar drinking liquor at or bringing liquor to place of voter registration
32-1506	Theft, destruction, removal, or falsification of voter registration and election records
32-1510	Hindering voter registration
32-1511	Obstructing deputy registrars at voter registration
32-1513	Bribery involving candidate filing forms and nominating petitions
32-1515	Wrongfully or willfully suppressing election nomination papers
32-1517	Service as election official, threat of discharge or coercion by employer
32-1519	Misconduct or neglect of duty by election official
32-1521	Printing or distribution of election ballots by other than election officials
32-1528	Voting outside of resident precinct, school district, or village
32-1549	Failing to appear or comply with citation issued under Election Act
35-520	False alarm or report of fire in rural fire protection district or area
35-801	Knowingly accepting, transferring, selling, or offering to sell or purchase firefighting clothing or equipment which does not meet standards
37-248	Violation of Game Law when not otherwise specified
37-314	Violation of rules, regulations, and commission orders under Game Law regarding seasons and other restrictions on taking wildlife
37-336	Violation of provisions for state wildlife management areas
37-348	Violation of provisions for state park system
37-406	Duplication of electronically issued license, permit, or stamp under Game Law
37-410	Obtaining permit to hunt, fish, or harvest fur by false pretenses or misuse of permit
37-410	Receipt of fur-harvesting permit by nonresident less than 16 years old without written parental permission
37-450	Violation of rules and regulations under Game Law regarding hunting elk
37-451	Violation of rules and regulations under Game Law regarding hunting mountain sheep
37-461	Violating permit to take or destroy muskrats or beavers or selling or using muskrats, beavers, or parts thereof without permit
37-462	Performing taxidermy services without permit and failure to keep complete records
37-501	Taking or possessing a greater number of game than allowed under Game Law
37-504	Hunting, trapping, or possessing animals or birds out of season
37-504	Unlawfully taking or possessing game other than elk
37-505	Unlawful purchase, sale, or barter of animals, birds, or fish or parts thereof
37-507	Abandonment, waste, or failure to dispose of fish, birds, or animals
37-508	Storing game or fish in cold storage after prescribed storage season or without proper tags
37-510	Violating game shipment requirements
37-511	Violating importation restrictions on game shipments
37-512	Violating regulations relating to the shipment of raw fur
37-513	Shooting at wildlife from highway
37-514	Hunting wildlife with artificial light

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### CLASS III MISDEMEANOR

37-515	Hunting, driving, or stirring up game birds or animals with aircraft or boat
37-521	Use of aircraft, vessel, vehicle, or other equipment to harass certain game animals
37-522	Carrying loaded shotgun in or on vehicle on highway
37-523	Unlawful hunting with a rifle within 200 yards of inhabited dwelling or livestock feedlot
37-523	Unlawful hunting without a rifle or trapping within 100 yards of inhabited dwelling or livestock feedlot
37-523	Unlawful trapping within 200 yards of livestock passage
37-524.02	Refusal to permit inspection, decontamination, or treatment of conveyance for aquatic invasive species
37-525	Taking game birds or game animals during closed season while training or running dogs
37-525	Running dogs on private property without permission
37-526	Unlawful use or possession of ferrets
37-531	Unlawful use of explosive traps or poison gas on wild animals
37-532	Setting an unmarked trap
37-533	Violating restrictions on hunting fur-bearing animals and disturbing their nests, dens, and holes
37-535	Hunting game from propelled boat or watercraft
37-536	Hunting game birds with certain weapons
37-537	Baiting game birds
37-538	Hunting game birds from vehicle
37-539	Taking or destroying nests or eggs of game birds
37-543	Unlawful taking of fish
37-545	Unlawful removal of fish from privately owned pond and violations of commercial fishing permits
37-546	Unlawful taking, use, or possession of baitfish
37-548	Release, importation, exportation, or commercial exploitation of wildlife or aquatic invasive species
37-552	Failure to maintain fish screens in good repair
37-557	Disturbing hatching boxes and nursery ponds
37-570	Knowing and intentional interference or attempt to interfere with hunting, trapping, fishing, or associated activity
37-605	Failure to appear on an alleged violation of Game Law
37-703	Defacing a sign at a game reserve, bird refuge, or wild fowl sanctuary
37-705	Disturbing or otherwise violating provisions relating to reserves, sanctuaries, and closed waters
37-709	Hunting, carrying firearms, or operating a motorboat in state game refuges
37-727	Violation of provisions for hunting, fishing, or trapping on privately owned land
37-1254.09	Refusing to submit to a preliminary breath test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs
37-1289	Operation or sale of motorboat without certificate of title, failure to surrender certificate upon cancellation, deface a certificate of title
38-1,118	Violation of Uniform Credentialing Act when not otherwise specified, first offense
38-1,133	Failure of insurer to report violations of Uniform Credentialing Act, first offense

## APPENDIX

### CLASS III MISDEMEANOR

38-10,165	Performing body art on minor without written consent of parent or guardian and keeping record 5 years
38-2867	Unlicensed person practicing pharmacy
39-103	Operation of motor vehicle in violation of published rules and regulations of the Department of Transportation
39-310	Depositing materials on roads or ditches, first offense
39-311	Placing burning materials or items likely to cause injury on highways, first offense
39-806	Destroying bridge or landmark
39-1335	Illegal use of adjoining property for access to state highway
39-1362	Digging up or crossing state highway
39-1412	Loads exceeding limits or posted capacity on county bridges
39-1806	Refusal of access to lands for placement of snow fences, willful or malicious damage thereto
39-1810	Livestock lanes, driving livestock on adjacent highways
39-1815	Leaving gates open on road over private property
43-257	Detaining or placing a juvenile in violation of certain Nebraska Juvenile Code provisions
43-709	Illegal placement of children
43-1310	Unauthorized disclosure of confidential information regarding foster children and their parents or relatives
43-1414	Violation of genetic paternity testing provisions, second or subsequent offense
43-3001	Public disclosure of confidential information received concerning a child who is or may be in state custody
43-3327	Unauthorized disclosure or release of confidential information regarding a child support order
43-3714	Violation of confidentiality provisions of Court Appointed Special Advocate Act
44-394	Violation of Chapter 44 when not otherwise specified
44-530	Violation of Standardized Health Claim Form Act
44-1113	Violation of Viatical Settlements Act
44-3721	Violation of Motor Club Services Act
44-5508	Surplus lines licensee placing coverage with a nonadmitted insurer or placing nonadmitted insurance with or procuring nonadmitted insurance from a nonadmitted insurer
45-601	Operating a collection agency business without a license or violation of Collection Agency Act
45-740	Residential mortgage loan violations by licensee
45-1023	Making a false statement to secure a loan
46-263	Neglecting or preventing delivery of irrigation water
46-1142	Failure to provide notice of a chemigation accident
46-1240	Engaging in business or employing another without complying with standards under Water Well Standards and Contractors' Practice Act
48-213	Employment regulations, violation of lunch hour requirements
48-216	Discrimination in employment by manufacturer or distributor of military supplies
48-511	Employment agencies splitting fees with employers
48-513	Violation of private employment agency provisions when not otherwise specified

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### CLASS III MISDEMEANOR

48-612	Commissioner of Labor employees violating provisions relating to administration of Employment Security Law
48-612.01	Unauthorized disclosure of information received for administration of Employment Security Law
48-614	Contumacy or disobedience to subpoenas in unemployment compensation proceedings
48-663	False statements or failure to disclose information by employees to obtain unemployment compensation benefits
48-664	False statements by employers to obtain unemployment compensation benefits
48-666	Violation of Employment Security Law when not otherwise specified
48-736	Violation of Boiler Inspection Act
48-1005	Age discrimination in employment or interfering with enforcement of statutes relating to age discrimination in employment
48-1118	Unlawful disclosure of information under Nebraska Fair Employment Practice Act
48-1123	Interference with Equal Opportunity Commission in performance of duty under Nebraska Fair Employment Practice Act
48-1227	Discrimination on the basis of sex
49-231	Failure of state, county, or political subdivision officer to furnish information required by constitutional convention
49-1447	Campaign practices, violation by committee treasurer or candidate in statements or reports
49-1461.01	Ballot question committee violating surety bond requirements
49-1469.08	Violation of campaign practices by businesses and organizations in contributions, expenditures, and volunteer services
49-1471	Campaign contribution or expenditure in excess of \$50 made in cash
49-1472	Campaign practices, acceptance of anonymous contribution
49-1473	Campaign practices, legal name of contributor required
49-1474	Campaign practices, political newsletter or mass mailing sent at public expense
49-1475	Campaign practices, failing to disclose name and address of contributor
49-1476.02	Accepting or receiving a campaign contribution from a state lottery contractor
49-1477	Campaign practices, required information on contributions from persons other than committees
49-1478	Campaign practices, violation of required reports on expenditures
49-1479	Campaign practices, unlawful contributions or expenditures made for transfer to candidate committee
49-1479.01	Violations related to earmarked campaign contributions
49-1490	Prohibited acts relating to gifts by principals or lobbyists
49-1492	Prohibited practices of a lobbyist
49-1492.01	Violation of gift reporting requirements by certain entities
49-14,101	Conflicts of interest, prohibited acts of public official, employee, candidate, and other individuals
49-14,101.01	Public official or employee using office, confidential information, personnel, property, or funds for financial gain or improperly using public communication system or public official or immediate family member accepting gift of travel or lodging if made for immediate family member to accompany the public official
49-14,103.04	Knowing violation of conflict of interest prohibitions

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**CLASS III MISDEMEANOR**

- 49-14,104 Official or full-time employee of executive branch representing a person or acting as an expert witness
- 49-14,115 Unlawful disclosure of confidential information by member or employee of Nebraska Accountability and Disclosure Commission
- 49-14,135 Violation of confidentiality of proceedings of Nebraska Accountability and Disclosure Commission
- 50-1213 Divulging confidential information or records relating to a legislative performance audit or preaudit inquiry
- 50-1214 Taking personnel action against a state employee providing information pursuant to Legislative Performance Audit Act
- 53-167.02 Violations relating to beer keg identification numbers
- 53-167.03 Tamper with, alter, or remove beer keg identification number or possess beer container with altered or removed keg identification number
- 53-180.05 Misrepresentation of age by minor to obtain or attempt to obtain alcoholic liquor
- 53-180.05 Minor over 18 years old and under 21 years old in possession of alcoholic liquor
- 53-180.05 Parent or guardian knowingly permitting minor to violate alcoholic liquor laws
- 53-181 Minor 18 years old or younger in possession of alcoholic liquor
- 53-186.01 Consumption of liquor in unlicensed public places
- 54-796 Violation of Animal Importation Act, first offense
- 54-904 Indecency with a livestock animal
- 54-1711 Livestock dealer violating provisions of Nebraska Livestock Dealer Licensing Act
- 54-1913 Meat and poultry inspector, officer, or employee accepting bribes
- 54-2288 Violation of quarantine requirements under Pseudorabies Control and Eradication Act, first offense
- 57-507 Unlawful use of liquefied petroleum gas cylinders
- 57-1106 Willfully and maliciously breaking, injuring, damaging, or interfering with oil or gas pipeline, plant, or equipment
- 60-142 Using a bill of sale for a parts vehicle to transfer ownership of any vehicle other than a parts vehicle
- 60-180 Prohibited acts relating to certificates of title for motor vehicles, all-terrain vehicles, or minibikes
- 60-3,113.07 Knowingly provide false information on an application for a handicapped or disabled parking permit
- 60-3,170 Violation of Motor Vehicle Registration Act when not otherwise specified
- 60-3,171 Fraud in registration of motor vehicle or trailer
- 60-3,176 Disclosure of information regarding undercover license plates to unauthorized individual
- 60-3,206 Violation of International Registration Plan Act
- 60-480.01 Disclosure of information regarding undercover drivers' licenses to unauthorized individual
- 60-4,108 Operating motor vehicle while operator's license is suspended or after revocation or impoundment but before licensure
- 60-4,109 Operating motor vehicle while operator's license is suspended or after revocation or impoundment but before licensure for violation of city or village ordinance

## APPENDIX

### CLASS III MISDEMEANOR

60-4,111	Violation of Motor Vehicle Operator's License Act when not otherwise specified
60-4,118	Failure to surrender operator's license or appear before examiner regarding determination of physical or mental competence
60-4,140	Commercial driver, multiple operators' licenses
60-4,141	Operation of commercial motor vehicle outside operator's license or permit classification
60-4,146.01	Violation of privileges conferred by commercial drivers' licenses
60-4,159	Commercial driver, failure to provide notifications relating to conviction or disqualification
60-4,161	Commercial driver, failure to provide information to prospective employer
60-4,162	Employer failing to require information or allowing commercial driver to violate highway-rail grade crossing, out-of-service order, or licensing provisions
60-4,170	Failure to surrender commercial driver's license or CLP-commercial learner's permit
60-4,179	Violation of driver training instructor or school provisions
60-4,184	Failure to surrender operator's license for loss of license under point system
60-4,186	Illegal operation of motor vehicle under period of license revocation for loss of license under point system
60-558	Failure to return motor vehicle license or registration to Department of Motor Vehicles for violation of financial responsibility provisions
60-560	Violation of Motor Vehicle Safety Responsibility Act when not otherwise specified
60-678	Operation of vehicles in certain public places where prohibited, where not permitted, without permission, or in a dangerous manner
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-6,110	Failing to obey lawful order of law enforcement officer given under Nebraska Rules of the Road to apprehend violator
60-6,130	Willful damage or destruction of road signs, monuments, traffic control or surveillance devices by shooting upon highway
60-6,211.11	Operating a motor vehicle with an ignition interlock device in violation of court order or Department of Motor Vehicles order unless otherwise specified
60-6,215	Reckless driving, first offense
60-6,216	Willful reckless driving, first offense
60-6,222	Violations in connection with headlights and taillights
60-6,228	Vehicle proceeding forward on highway with backup lights on
60-6,234	Violations involving rotating or flashing lights on motor vehicles
60-6,235	Violation of vehicle clearance light requirements
60-6,245	Violation of motor vehicle brake requirements
60-6,259	Application of an illegal sunscreening or glazing material on a motor vehicle
60-6,263	Operating or owning vehicle in violation of safety glass requirements
60-6,291	Exceeding limitations on width, length, height, or weight of motor vehicles when not otherwise specified
60-6,303	Refusal to weigh vehicle or lighten load
60-6,336	Snowmobile contest on highway without permission, first offense within one year

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### CLASS III MISDEMEANOR

60-6,343	Violation of provisions relating to snowmobiles, first offense within one year
60-6,352	Illegal operation of minibikes on state highway
60-6,353	Operating a minibike in a place, at a time, or in a manner not permitted by regulatory authority
60-6,362	Violation of all-terrain vehicle requirements, first offense within one year
60-1307	Failing to appear at hearing for violations discovered at weigh stations
60-1308	Failure to comply with weigh station requirements
60-1309	Resisting arrest or disobeying order of carrier enforcement officer at weigh station
60-1418	Violating conditions of a motor vehicle sale
62-304	Limitation upon negotiation of tuition notes or contracts of business colleges
64-105.03	Unauthorized practice of law by notary public
66-107	Illegal use of containers for gasoline or kerosene
68-314	Unlawful use and disclosure of books and records of Department of Health and Human Services
68-1017	Obtaining through fraud assistance to aged, blind, or disabled persons, aid to dependent children, or supplemental nutrition assistance program benefits when value is \$500 or more but less than \$1,500
68-1017.01	Unlawful use, alteration, or transfer of supplemental nutrition assistance program benefits when value is \$500 or more but less than \$1,500
68-1017.01	Unlawful possession or redemption of supplemental nutrition assistance program benefits when value is \$500 or more but less than \$1,500
69-2012	Violation of Degradable Products Act
69-2443	Carrying concealed handgun at prohibited site or while under the influence, first offense
69-2443	Failure to report discharge of concealed handgun, first offense
69-2443	Failure to carry or display concealed handgun permit, first offense
69-2443	Failure to inform peace officer of concealed handgun, first offense
69-2709	Selling, possessing, or distributing cigarettes in violation of stamping requirements
71-220	Violation of barbering provisions
71-506	Willful or malicious disclosure of confidential reports, notifications, and investigations relating to communicable diseases
71-542	Unauthorized disclosure of confidential immunization information
71-613	Violation of provisions on vital statistics
71-1371	Violation of Cremation of Human Remains Act
71-1631.01	Violating regulation for protecting public health and preventing communicable diseases
71-1905	Violations regarding children in foster care
71-2228	Illegal receipt of food supplement benefits when value is \$500 or more but less than \$1,500
71-2229	Using, altering, or transferring food instruments or food supplements when value is \$500 or more but less than \$1,500
71-2229	Illegal possession or redemption of food supplement benefits when value is \$500 or more but less than \$1,500
71-2482	Violation involving adulterated or misbranded drugs, first offense
71-2482	Violation of provisions relating to drugs which are not controlled substances



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### CLASS III MISDEMEANOR

71-2510.01	Use of arsenic or strychnine in embalming fluids, violations of labeling requirements
71-2512	Violation of Poison Control Act when not otherwise specified, first offense
71-4632	Mobile home parks established, conducted, operated, or maintained without license, nuisance
71-6741	Violation of Medication Aide Act
71-6907	Performing an abortion in violation of parental consent provisions, knowingly and intentionally or with reckless disregard
71-6907	Unauthorized person providing consent for an abortion
71-6907	Coercing a pregnant woman to have an abortion
74-609.01	Hunting on railroad right-of-way without permission
74-1331	Failure to construct, maintain, and repair railroad bridges in compliance with law
75-114	Refusal to allow access to Public Service Commission to records of a motor or common carrier
75-367	Violation of motor carrier safety regulations or hazardous materials regulations
76-505	Judges and other county officers engaging in business of abstracting
76-558	Unlawful practice in business of abstracting
76-2246	Unlawful practice as a real property appraiser
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of less than \$200 (certain situations)
77-1719.02	Violations by county board members regarding collection of personal taxes and false returns
77-2619	Fail, neglect, or refuse to report or make false statement regarding cigarette taxation
77-3407	Unlawful signature on budget limitation petition
79-210	Violation of compulsory school attendance provisions
79-603	School vehicles, violation of safety requirements and operating school vehicles which violate safety requirements when not otherwise specified
79-727	Violation of character education requirements
79-897	Illegal inquiries concerning religious affiliation of teacher applicants
79-8,101	Illegal solicitation of business from classroom teachers
79-1607	Violation of laws on private, denominational, and parochial schools
81-2,157	Unlawful sale or marking of hybrid seed corn
81-2,179	Violation of Nebraska Apiary Act
81-829.41	Unauthorized release of information from emergency management registry
81-8,127	Unlawful practice of land surveying or use of title
81-8,142	Violation of provisions relating to the State Athletic Commissioner
81-8,205	Unlawful practice as a professional landscape architect
81-1508.01	Knowing and willful violation of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act when not otherwise specified
81-2008	Failure to obey rules or orders of or resisting arrest by Nebraska State Patrol
82-111	Destroy, deface, remove, or injure monuments marking Oregon Trail
82-507	Knowingly and willfully appropriate, excavate, injure, or destroy any archaeological resource on public land without written permission from the State Archaeology Office

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**CLASS III MISDEMEANOR**

82-508	Enter or attempt to enter upon the lands of another without permission and intentionally appropriate, excavate, injure, or destroy any archaeological resource or any archaeological site
84-311	Disclosure of restricted information by the Auditor of Public Accounts or an employee of the auditor
84-316	Taking personnel action against a state or public employee for providing information to the Auditor of Public Accounts
84-712.09	Violation of provisions for access to public records
84-1213	Mutilation, transfer, removal, damage, or destruction of or refusal to return government records
84-1414	Unlawful action by members of public bodies in public meetings, second or subsequent offense
86-290	Intercepting or interfering with certain wire, electronic, or oral communication
86-606	Unlawful delay or disclosure of telegraph dispatches
89-1,101	Violation of Weights and Measures Act or order of Department of Agriculture, first offense
90-104	Use of state banner as advertisement or trademark

**CLASS IIIA MISDEMEANOR**

**Maximum—seven days' imprisonment, five hundred dollars' fine, or both  
Minimum—none**

28-416	Knowingly or intentionally possessing one ounce or less of marijuana or any substance containing a quantifiable amount of a material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids, third or subsequent offense
53-173	Knowingly or intentionally possessing powdered alcohol, third or subsequent offense
54-623	Owning a dangerous dog within 10 years after conviction of violating dangerous dog laws
54-623	Dangerous dog attacking or biting a person when owner of dog has a prior conviction for violating dangerous dog laws
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-6,196.01	Driving under the influence with a prior felony DUI conviction
60-6,275	Operating or possessing radar transmission device while operating motor vehicle
60-6,378	Failure to move over, proceed with due care and caution, or follow officer's directions when passing a stopped emergency or road assistance vehicle, second or subsequent offense
77-2704.33	Failure of a contractor or taxpayer to pay certain sales taxes of less than \$300
79-1602	Transmitting or providing for transmission of false school information when electing not to meet school accreditation or approval requirements
89-1,107	Use of a grain moisture measuring device which has not been tested
89-1,108	Violation of laws on grain moisture measuring devices

**CLASS IV MISDEMEANOR**

**Maximum—no imprisonment, five hundred dollars' fine  
Minimum—none**

2-220.03	Failure to file specified security or certificates by carnival companies, booking agencies, or shows for state and county fairs
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## APPENDIX

### CLASS IV MISDEMEANOR

2-957	Unlawful movement of article through which noxious weeds may be disseminated
2-963	Violation of provisions relating to weed control
2-10,115	Specified violations of Plant Protection and Plant Pest Act, first offense
2-1207	Knowingly aiding or abetting a minor to make a parimutuel wager
2-1806	Engaging in business as a potato shipper without a license
2-1807	Failure by potato shipper to file statement or pay tax
2-3109	Violation of Nebraska Soil and Plant Analysis Laboratory Act when not otherwise specified
2-3223.01	Failure to file audit of natural resources district
2-4327	Violation of Agricultural Liming Materials Act, first offense
3-330	Violation of Airport Zoning Act
9-513	Violation of Nebraska Small Lottery and Raffle Act, first offense
9-814	Purchase of state lottery ticket by person less than 19 years old
12-512.07	Violations in administering perpetual care trust funds for cemeteries
12-617	Violation relating to perpetual care trust funds for public mausoleums and other burial structures
12-1115	Failure to surrender a license under Burial Pre-Need Sale Act
14-415	Violation of building ordinance or regulations in city of the metropolitan class, first or second offense
19-1847	Violation of Civil Service Act
20-149	Failure of consumer reporting agency to provide reports to consumers, protected consumers, or representatives
23-387	Violation of provisions relating to community antenna television service
23-919	Violation of County Budget Act of 1937
23-1507	Failure of register of deeds to perform duties
23-1821	Failure to notify coroner of a death during apprehension or while in custody
25-1563	Attachment or garnishment procedure used to avoid exemption laws
25-1640	Penalizing employee due to jury service
28-410	Failure to comply with inventory requirements by manufacturer, distributor, or dispenser of controlled substances
28-416	Knowingly or intentionally possessing one ounce or less of marijuana or any substance containing a quantifiable amount of a material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids, second offense
28-456.01	Purchase, receive, or otherwise acquire pseudoephedrine base or phenylpropanolamine base over authorized limits, first offense
28-462	Knowingly fail to submit methamphetamine precursor information or knowingly submit incorrect information to national exchange
28-1009	Harassment of police animal not resulting in death of animal
28-1019	Violation of court order related to misdemeanor animal abuse conviction
28-1104	Promoting gambling in the third degree
28-1253	Distribution, sale, or use of refrigerants containing liquefied petroleum gas
28-1304	Putting carcass or filthy substance in well or running water
28-1357	Distribute or sell a novelty lighter without a child safety feature
28-1405	Failure to acquire locksmith registration certificate
29-3527	Unlawful access to or dissemination of criminal history record information
32-1507	Elections, false representation of political party affiliation

## APPENDIX

### CLASS IV MISDEMEANOR

32-1517	Refusing to serve as election official
32-1520	Printing or distribution of illegal ballots
32-1547	Elections, filing for more than one elective office
36-213.01	Unlawful assignment or notice of assignment of wages of head of family
37-403	Violation of farm or ranch land hunting permit exemption
37-463	Dealing in raw furs without fur buyer's permit, failure to keep complete records of furs bought or sold
37-471	Violation relating to aquatic organisms raised under an aquaculture permit
37-482	Keeping wild birds or animals in captivity without permit
37-4,103	Unlawfully taking, maintaining, or selling raptors
37-524	Importation, possession, or release of certain wild or nonnative animals or aquatic invasive species
37-528	Administering a drug to wildlife
37-558	Placing harmful matter into waters stocked by Game and Parks Commission
37-1238.02	Failure of vessel to comply with order of officer to stop
37-1271	Violation of certain provisions of State Boat Act
38-28,115	Violation of Nebraska Drug Product Selection Act or rules and regulations
39-302	Failure to properly equip certain sprinkler irrigation systems with endgun
43-1414	Violation of genetic paternity testing provisions, first offense
44-3,142	Unauthorized release of relevant insurance information relating to motor vehicle theft or insurance fraud
44-10,108	Soliciting membership for a fraternal benefit society not licensed in this state
44-2615	Acting as insurance consultant without license
45-101.07	Lender imposing certain conditions on mortgage loan escrow accounts
46-613.02	Violations of registration and spacing requirements for water wells; illegal transfer of ground water
46-687	Withdrawing or transferring ground water in violation of Industrial Ground Water Regulatory Act
46-1127	Placing chemical in irrigation distribution system without complying with law
46-1143	Violation of Nebraska Chemigation Act when not otherwise specified
46-1666	Willfully obstruct, hinder, or prevent Department of Natural Resources from performing duties under Safety of Dams and Reservoirs Act
48-219	Contracting to deny employment due to relationship with labor organization
48-230	Violation of provisions allowing preference to veterans seeking employment
48-433	Failure of architect to comply with law in preparing building plans
48-1206	Minimum wage rate violations
48-1505	Violations relating to sheltered workshops
48-2211	Violating recruiting restrictions related to non-English-speaking persons
49-1445	Violation of requirement to form candidate committee upon raising, receiving, or expending more than \$5,000 in a calendar year
49-1446	Violations relating to campaign committee funds
49-1467	Failure to report campaign expenditure of more than \$250
49-1474.01	Violation of distribution requirements for political material

## APPENDIX

### CLASS IV MISDEMEANOR

53-149	Providing false information regarding alcohol retailer's accounts with alcoholic liquor wholesale licensee in connection with sale of retailer's business
53-173	Knowingly or intentionally possessing powdered alcohol, second offense
53-186.01	Permitting consumption of liquor in unlicensed public places, first offense
53-187	Nonbeverage liquor licensee giving or selling liquor fit for beverage purposes, first offense
53-194.03	Importation of alcohol for personal use in certain quantities
53-1,100	Violation of Nebraska Liquor Control Act, first offense
54-315	Leaving well or pitfall uncovered, failure to decommission inactive well
54-613	Allowing dogs to run at large, damage property, injure persons, or kill animals
54-622	Violation of restrictions on dangerous dogs
54-753.04	Unlawful feeding of garbage to animals
54-861	Violation of Commercial Feed Act, first offense
54-861	Improper use of trade secrets in violation of Commercial Feed Act
54-909	Violating court order not to own or possess a livestock animal after the date of conviction for indecency with a livestock animal, first offense
	cruel mistreatment of an animal, or intentionally, knowingly, or recklessly abandoning or cruelly neglecting livestock animal not resulting in serious injury or illness or death of the livestock animal
54-1371	Failure by owner to carry out brucellosis testing responsibilities
54-1377	Diversion of livestock from particular destination without permission or removing or altering livestock identification for such purposes
54-1384	Violation of Nebraska Bovine Brucellosis Act when not otherwise specified
54-1605	Violation of accreditation provisions for specific pathogen-free swine
54-22,100	Violation of Pseudorabies Control and Eradication Act, first offense
54-2323	Violation of Domesticated Cervine Animal Act, first offense
54-2612	Unlawful sale of swine by packer
54-2615	False reporting of swine by packer
54-2622	Unlawful sale of cattle by packer
54-2625	False reporting of cattle by packer
54-2761	Violation of Scrapie Control and Eradication Act, first offense
55-165	Discriminating against an employee who is a member of the reserve military forces
55-166	Discharging employee who is a member of the National Guard or armed forces of the United States for military service
57-516	Violation of provisions relating to sale of liquefied petroleum gas
57-719	Violating or aiding and abetting violations of oil and gas severance tax laws
57-1213	Failure or refusal to make uranium severance tax return or report
60-3,168	Failure to have and keep liability insurance or other proof of financial responsibility on motor vehicle
60-3,169	Unauthorized use of vehicle registered as farm truck
60-3,172	Registration of motor vehicle or trailer in location other than that authorized by law
60-3,173	Improper increase of gross weight or failure to pay registration fee on commercial trucks and truck-tractors

## APPENDIX

### CLASS IV MISDEMEANOR

60-3,174	Improper use of a vehicle with a special equipment license plate
60-4,129	Violation involving use of an employment driving permit
60-4,130	Failure to surrender an employment driving permit
60-4,130.01	Violation involving use of a medical hardship driving permit
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-6,175	Improperly passing a school bus with warning signals flashing or stop signal arm extended
60-6,197.01	Failure to report unauthorized use of immobilized vehicle
60-6,292	Violation of requirements for extra-long vehicle combinations
60-6,302	Unlawful repositioning fifth-wheel connection device of truck-tractor and semitrailer combination
60-6,304	Operation of vehicle improperly constructed or loaded or with cargo or contents not properly secured
60-6,304	Spilling manure or urine from an empty livestock vehicle in a city of the metropolitan class
60-1407.02	Unauthorized use of sales tax permit relating to sale of vehicle or trailer
63-103	Printing copies of a publication in excess of the authorized quantity
66-495.01	Unlawfully using or selling diesel fuel or refusing an inspection
66-6,115	Fueling a motor vehicle with untaxed compressed fuel
66-727	Failure to obtain license as required under motor fuel tax laws
66-727	Failure to produce motor fuel license or permit for inspection
66-1521	Sell, distribute, deliver, or use petroleum as a producer, refiner, importer, distributor, wholesaler, or supplier without a license
68-1017	Obtaining through fraud assistance to aged, blind, or disabled persons, aid to dependent children, or supplemental nutrition assistance program benefits when value is less than \$500
68-1017.01	Unlawful use, alteration, or transfer of supplemental nutrition assistance program benefits when value is less than \$500
68-1017.01	Unlawful possession or redemption of supplemental nutrition assistance program benefits when value is less than \$500
69-1808	Violation of American Indian Arts and Crafts Sales Act
69-2709	Knowing or intentional cigarette sales report, tax, or stamp violations or sales of unstamped cigarettes or cigarettes from manufacturer not in directory, first offense
69-2709	Knowing or intentional cigarette sales or purchases from unlicensed stamping agent or without appropriate stamp or reporting requirements, first offense
71-1563	Modular housing unit sold or leased without official seal
71-1613	Violation of provisions relating to district health boards
71-1914.03	Providing unlicensed child care when a license is required
71-2096	Interfere with enforcement of provisions relating to health care facility receivership proceedings
71-2228	Illegal receipt of food supplement benefits when value is less than \$500
71-2229	Using, altering, or transferring food instruments or food supplements when value is less than \$500
71-2229	Illegal possession or redemption of food supplement benefits when value is less than \$500
71-3517	Violation of Radiation Control Act
71-4632	Mobile home parks established, conducted, operated, or maintained without license
71-5312	Violation of Nebraska Safe Drinking Water Act

APPENDIX

**CLASS IV MISDEMEANOR**

71-5733	Smoking in place of employment or public place, second or subsequent offense
71-5733	Proprietor violating Nebraska Clean Indoor Air Act, second or subsequent offense
71-5870	Engaging in activity prohibited by Nebraska Health Care Certificate of Need Act
71-8711	Disclose actions, decisions, proceedings, discussions, or deliberations of patient safety organization meeting
73-105	Violation of laws on public lettings
74-1323	Failure to comply with order by Public Service Commission to store or park railroad cars safe distance from crossing
75-117	Refusal to comply with an order of Public Service Commission by a motor or common carrier
75-155	Knowing and willful violation of Chapter 75 or 86 when not otherwise specified
75-371	Operating motor vehicle in violation of insurance and bond requirements for motor carriers
75-398	Operation of vehicle in violation of provisions relating to the unified carrier registration plan and agreement
75-426	Failure to file report of railroad accident
77-1232	Failure to list or filing false list of personal property for tax purposes prior to 1993
77-1324	False statement of assessment of public improvements
77-2026	Receipt by inheritance tax appraiser of extra fee or reward
77-2350.02	Failure to perform duties relating to deposit of public funds by school district or township treasurer
77-2713	Violation of laws relating to sales and use taxes when not otherwise specified
77-3709	Violation of reporting and permit requirements for mobile homes
81-2,147.09	Violation of Nebraska Seed Law
81-2,154	Violation of state-certified seed laws
81-2,290	Violation of Nebraska Pure Food Act
81-520.02	Violation of open burning ban or range-management burning permit
81-5,131	Violation of provisions relating to arson information
81-674	Wrongful disclosure of confidential data from medical record and health information registries or deceitful use of such information
81-1525	Failure or refusal to remove accumulation of junk
81-1559	Failure of manufacturer or wholesaler to obtain litter fee license
81-1560.01	Failure of retailer to obtain litter fee license
81-1577	Failure to register hazardous substances storage tanks
81-1626	Lighting and thermal efficiency violations
84-1414	Unlawful action by members of public bodies in public meetings, first offense
86-162	Failure to provide telephone services

**CLASS V MISDEMEANOR**

**Maximum—no imprisonment, one hundred dollars' fine**

**Minimum—none**

2-219	Conducting indecent shows or exhibits or gambling at state, district, or county fairs
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## APPENDIX

### CLASS V MISDEMEANOR

2-220	State, district, and county fairs, refusal or failure to remove illegal devices
2-3292	Conducting recreational activities outside of designated areas in a natural resources district recreation area
2-3293	Smoking and use of fire or fireworks in a natural resources district recreation area
2-3294	Pets or other animals in a natural resources district recreation area
2-3295	Hunting, fishing, trapping, or using weapons in a natural resources district recreation area
2-3296	Conducting prohibited water-related activities in a natural resources district recreation area
2-3297	Destruction or removal of property, constructing a structure, or trespassing in a natural resources district recreation area
2-3298	Abandoning vehicle in a natural resources district recreation area
2-3299	Unauthorized sale or trading of goods in a natural resources district recreation area
2-32,100	Violation of traffic rules in a natural resources district recreation area
2-3974	Violation of Nebraska Milk Act or impeding or attempting to impede enforcement of the act
7-111	Practice of law by certain judges, clerks, sheriffs, or other officials
8-113	Unauthorized use of the word "bank"
8-114	Unauthorized conduct of banking business
8-226	Unauthorized use of the words "trust", "trust company", "trust association", or "trust fund"
8-305	Unauthorized use of "building and loan" or "savings and loan" or any combination of such words in corporate name
8-829	Collecting certain charges on personal loans by banks and trust companies
13-510	Illegal obligation of funds in county budget during emergency
16-230	Violation of ordinances regulating drainage, litter, and growth of grass, weeds, and worthless vegetation
17-563	Violation of ordinances regulating drainage, litter, and growth of grass, weeds, and worthless vegetation
18-312	Cities, villages, and their officers entering into compensation contracts contingent upon elections
21-1306	Unauthorized use of the word "cooperative"
21-1728	Unlawful use of the words "credit union" or representing oneself or conducting business as a credit union
23-808	Operating pool or billiard hall or bowling alley outside of municipality without a county license
23-813	Operating roadhouse, dance hall, carnival, show, amusement park, or other place of public amusement outside of municipality without a county license
23-817	Violation of law regulating places of amusement
23-1612	Audit of county offices, failure or refusal to exhibit records
24-216	Clerk of Supreme Court, fees, neglect or fraud in report
28-3,107	Intentional or reckless falsification of report required under Pain-Capable Unborn Child Protection Act
28-725	Unauthorized release of child abuse or neglect information
28-1018	Selling puppy or kitten under 8 weeks old without its mother
28-1255	Sale, possession, or use of flying lantern-type devices



## APPENDIX

### CLASS V MISDEMEANOR

28-1305	Putting carcass or putrid animal substance in a public place
28-1306	Railroads bringing unclean stock cars into state
28-1308	Watering livestock at private tank without permission
28-1347	Unauthorized access to or use of a computer, first offense
28-1418	Smoking or other use of tobacco by minors or use of vapor or other alternative nicotine products by minors
28-1427	Minor misrepresenting age to obtain tobacco or cigarette, vapor, or alternative nicotine products
28-1472	Failure to submit to preliminary breath test for operation of aircraft while under influence of alcohol or drugs
28-1483	Sale of certain donated food
31-435	Neglect of duty by officers of drainage districts
32-228	Failure to serve as an election official in counties having an election commissioner
32-236	Failure to serve as an election official in counties that do not have an election commissioner
32-241	Taking personnel actions against employee serving as an election official
32-1523	Obstructing entrance to polling place
32-1524	Electioneering by election official
32-1524	Electioneering or soliciting at or near polling place
32-1525	Exit interviews with voters near polling place on election day
32-1527	Voter voting ballot, unlawful acts
32-1535	Unlawful removal of ballot from polling place
33-132	Failure or neglect to charge, keep current account of, report, or pay over fees by any officer
37-305	Violation of rules and regulations for camping areas
37-306	Violation of rules and regulations for fire safety
37-307	Violation of rules and regulations for animals on state property
37-308	Violation of rules and regulations for hunting, fishing, trapping, and use of weapons on state property
37-309	Violation of rules and regulations for water-related recreational activities on state property
37-310	Violation of rules and regulations for real and personal property on state property
37-311	Violation of rules and regulations for vendors on state property
37-313	Violation of rules and regulations for traffic on state property under Game and Parks Commission jurisdiction
37-321	Fishing violation in emergency created by drying up of waters
37-349	Use of state park name for commercial purposes
37-428	Obtaining habitat stamps, aquatic habitat stamps, or migratory waterfowl stamps by false pretenses or misuse of stamps
37-433	Violation of provisions on habitat stamps or aquatic habitat stamps
37-443	Entry by a motor vehicle to a park permit area without a valid park permit
37-476	Violation of aquaculture provisions
37-504	Unlawfully taking, possessing, or destroying certain birds, eggs, or nests
37-527	Failure to display required amount of hunter orange material when hunting
37-541	Kill, injure, or detain carrier pigeons or removing identification therefrom

## APPENDIX

### CLASS V MISDEMEANOR

37-553	Violation by owner of dam to maintain water flow for fish
37-609	Resisting officer or employee of the Game and Parks Commission
37-610	Falsely representing oneself as officer or employee of the Game and Parks Commission
37-728	False statements about fishing on privately owned land
37-1270	Violation of State Boat Act when not otherwise specified
37-12,107	Destroy, deface, or remove any part of unattended or abandoned motorboat
39-221	Illegal advertising outside right-of-way on state highways
39-301	Injuring or obstructing public roads
39-303	Injuring or obstructing sidewalks or bridges
39-304	Injuring roads, bridges, gates, milestones, or other fixtures
39-305	Plowing up public highway
39-306	Willful neglect of duty by road overseer or other such officer
39-307	Building barbed wire fence which obstructs highway without guards
39-308	Failure of property owner to remove plant which obstructs view of roadway within 10 days after notice
39-312	Illegal camping on highways, roadside areas, or parks unless designated as campsites or violating camping regulations
39-313	Hunting on freeway or private land without permission
39-808	Unlawful signs or advertising on bridges or culverts
39-1012	Illegal location of rural mail boxes
39-1801	Removing or interfering with barricades on county and township roads
39-1816	Illegal parking of vehicles on county road right-of-way
42-918	Unlawful disclosure of confidential information under Protection from Domestic Abuse Act
44-361.02	Insurance agent obtaining license or renewal to circumvent rebates
46-266	Owner allowing irrigation ditches to overflow on roads
46-282	Wasting artesian water
46-1666	Violation of Safety of Dams and Reservoirs Act or any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act
47-206	Neglect of duty by municipal jailer
48-222	Unlawful cost to applicant for medical examination as condition of employment
48-237	Prohibited uses of social security numbers by employers
48-442	Violation involving high voltage lines
48-1227	Discriminatory wage practices based on sex, failing to keep or falsifying records, interfering with enforcement
48-2533	Knowing violation of Conveyance Safety Act
49-211	Failure of election officers to make returns on adoption of constitutional amendment
49-14,103.04	Negligent violation of conflict of interest prohibitions
51-109	Illegal removal of books from State Library
53-197	Neglect or refusal of sheriffs or police officers to make complaints against violators of liquor laws
54-302	Driving off livestock belonging to another
54-306	Driving cattle, horses, or sheep across private lands causing injury
54-7,104	Failure to take care of livestock during transport
59-1503	Unlawful acts by retailers or wholesalers in sales of cigarettes
60-196	Failure to retain a true copy of an odometer statement for five years

## APPENDIX

### CLASS V MISDEMEANOR

60-3,135.01	Unlawful ownership or operation of a motor vehicle with special interest motor vehicle license plates
60-3,166	Dealer, prospective buyer, or finance company operating motor vehicle or trailer without registration, transporter plate, or manufacturer plates and failing to keep records
60-3,175	Violation of registration and use provisions relating to historical vehicles
60-4,164	Refusal of commercial driver to submit to preliminary breath test for driving under the influence of alcohol
60-690	Aiding or abetting a violation of Nebraska Rules of the Road
60-699	Failure to report vehicle accident or give correct information
60-6,197.04	Refusal to submit to preliminary breath test for driving under the influence of alcohol
60-6,211.05	Failure by ignition interlock service facility to notify probation office, court, or Department of Motor Vehicles of evidence of tampering with or circumvention of an ignition interlock device
60-6,224	Failure to dim motor vehicle headlights
60-6,239	Failure to equip or display motor vehicles required to have clearance lights, flares, reflectors, or red flags
60-6,240	Willful removal of red flags or flares before driver of vehicle is ready to proceed
60-6,247	Operation of buses or trucks without power brakes, auxiliary brakes, or standard booster brake equipment
60-6,248	Selling hydraulic brake fluid that does not meet requirements
60-6,258	Owning or operating a motor vehicle with illegal sunscreening or glazing material on windshield or windows
60-6,266	Sale of motor vehicle which does not comply with occupant protection system (seat belt) requirements
60-6,287	Operating a motor vehicle which is equipped to enable the driver to watch television while driving
60-6,319	Commercial dealer selling bicycle which fails to comply with requirements
60-6,373	Operation of diesel-powered motor vehicle in violation of controls on smoke emission and noise
60-1411.04	Unlawful advertising of motor vehicles
60-1808	Violation of laws relating to motor vehicle camper units
60-1908	Destroying, defacing, or removing parts of abandoned motor vehicles
61-211	Managers or operators of interstate ditches failing to install measuring devices and furnish daily gauge height reports
69-208	Violation of laws relating to pawnbrokers and dealers in secondhand goods
69-1005	Violation of requirements for sale at auction of commercial chicks and poultry
69-1007	Failure to keep records on sale of poultry
69-1008	False representation in sale of poultry
69-1102	Failing to comply with labeling requirements on binder twine
70-409	Violation of rate regulations by electric companies
70-624	Failure of chief executive officer to publish salaries of public power district officers
71-503	Physician failing to report existence of contagious disease, illness, or poisoning

## APPENDIX

### CLASS V MISDEMEANOR

71-506	Violation of prevention and testing provisions for contagious and infectious diseases
71-1006	Violation of laws relating to disposal of dead bodies
71-1571	Installation of 4 or more showers or bathtubs without scald prevention device
71-3107	Violation of laws relating to recreation camps
71-4410	Violation of rabies control provisions
71-5733	Smoking in place of employment or public place, first offense
71-5733	Proprietor violating Nebraska Clean Indoor Air Act, first offense
74-593	Using track motor cars on rail lines without headlights or rear lights
74-605	Failure of railroad to report or care for injured animals
74-1308	Failure of Railroad Transportation Safety District treasurer to file report or neglect of duties or refusal by district officials to allow inspection of records
74-1340	Failure, neglect, or refusal to comply with order of Department of Transportation regarding railroad crossings
75-429	Failure of railroad to maintain or operate switch stand lights and signals
76-247	Register of deeds giving certified copy of power of attorney which has been revoked without stating fact of revocation in certificate
76-2,122	Acting as real estate closing agent without license or without complying with law
77-2105	Failure to furnish information or reports for estate or generation-skipping transfer taxes
77-5016.08	Prohibited acts relating to subpoenas, testimony, and depositions in Tax Equalization and Review Commission proceedings
79-223	Violation of student immunization requirements
79-253	Violation regarding physical examinations of students
79-571	Disorderly conduct at school district meetings
79-581	Failure by secretary of Class III school district to publish claims and summary of proceedings
79-606	Failure to remove equipment from and repaint school transportation vehicles sold for other purposes
79-607	Violation of traffic regulations or failure to include obligation to comply with traffic regulation in school district employment contract
79-608	Violations by a school bus driver involving licensing or hours of service
79-949	Failure or refusal to furnish information to retirement board for school employees retirement
79-992.02	Willful failure or refusal to furnish information to board of trustees under the Class V School Employees Retirement Act
79-1084	Secretary of Class III school board failing or neglecting to publish budget documents
79-1086	Secretary of Class V school board failing or neglecting to publish budget documents
81-520	Failure to comply with order of State Fire Marshal to remove or abate fire hazards
81-522	Failure of city or county authorities to investigate and report fires
81-538	Violation of State Fire Marshal or fire abatement provisions when not otherwise specified
81-5,146	Violation of smoke detector provisions
81-5,163	Water-based fire protection system contractor failing to comply with requirements

APPENDIX

**CLASS V MISDEMEANOR**

81-649.02	Failure by hospital to make reports to cancer registry
81-6,120	Provision of transportation services by certain persons or failing to submit to background check prior to providing such services to vulnerable adults or minors on behalf of Department of Health and Human Services
81-1024	Personal use of state-owned motor vehicle
81-1551	Failure to place litter receptacles on premises in sufficient number
81-1552	Damaging or misusing litter receptacle
82-124	Damage to property of Nebraska State Historical Society
82-126	Violating restrictions on visitation to state sites and monuments
83-356	Mistreatment of mentally ill persons
86-161	Failure of telecommunications company to file territorial maps
86-609	Unlawful telegraph dispatch activities
88-549	Failure of warehouse licensee to send written notice to person storing grain of amount, location, and fees

**CLASS W MISDEMEANOR**

**First Conviction:**

**Maximum—sixty days' imprisonment and five hundred dollars' fine**

**Mandatory minimum—seven days' imprisonment and five hundred dollars' fine**

**Second Conviction:**

**Maximum—six months' imprisonment and five hundred dollars' fine**

**Mandatory minimum—thirty days' imprisonment and five hundred dollars' fine**

**Third Conviction:**

**Maximum—one year imprisonment and one thousand dollars' fine**

**Mandatory minimum—ninety days' imprisonment and one thousand dollars' fine**

60-690	Aiding or abetting a violation of Nebraska Rules of the Road which is a Class W misdemeanor
60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug committed with less than .15 gram alcohol concentration
60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug committed with .15 gram alcohol concentration, first offense only
60-6,197.03	Refusal to submit to chemical blood, breath, or urine test

**UNCLASSIFIED MISDEMEANORS, see section 28-107**

14-227	Failure to remit fines, penalties, and forfeitures to city treasurer —fine of not more than one thousand dollars —imprisonment of not more than six months
14-229	City officer or employee exerting influence regarding political views —fine of not more than one hundred dollars —imprisonment of not more than thirty days
15-215	Using unsafe building for the assembly of more than 12 persons —fine of not more than two hundred dollars
16-233	Using unsafe building for the assembly of more than 12 persons —fine of not more than two hundred dollars
16-706	Unauthorized use of city funds by city council member or city officer —fine of twenty-five dollars plus costs of prosecution
18-1914	Violation of plumbing ordinances or plumbing license requirements —fine of not more than fifty dollars and not less than five dollars per violation

APPENDIX

**UNCLASSIFIED MISDEMEANORS**, see section 28-107

- 18-1918 Installing or repairing sanitary plumbing without permit  
–fine of not less than fifty dollars nor more than five hundred dollars
- 18-2205 Violation involving community antenna television service or franchise ordinance  
–fine of not more than five hundred dollars
- 18-2315 Violation involving heating, ventilating, and air conditioning services  
–fine of not more than five hundred dollars  
–imprisonment of not more than six months  
–both
- 19-905 Remove, alter, or destroy posted notice prior to building zone and regulation hearing
- 19-913 Violation of zoning laws and ordinances and building regulations  
–fine of not more than one hundred dollars  
–imprisonment of not more than thirty days
- 19-1104 Failure of city or village clerk or treasurer to publish council proceedings or fiscal statement  
–fine of not more than twenty-five dollars and removal from office
- 20-124 Interference with freedom of speech and access to public accommodation  
–fine of not more than one hundred dollars  
–imprisonment of not more than six months  
–both
- 20-140 Equal Opportunity Commission officer or employee revealing unlawful discrimination complaint or investigation  
–fine of not more than one hundred dollars  
–imprisonment of not more than thirty days
- 23-2533 Willful violation of County Civil Service Act  
–fine of not more than five hundred dollars  
–imprisonment of not more than six months  
–both
- 25-2231 Constable acting outside of jurisdiction  
–fine of not less than ten dollars nor more than one hundred dollars  
–imprisonment of not more than ten days
- 29-426 Failure to appear or comply with citation for traffic or other offense  
–fine of not more than five hundred dollars  
–imprisonment of not more than three months  
–both
- 31-134 Obstructing drainage ditch  
–fine of not less than ten dollars nor more than fifty dollars
- 31-221 Injuring or obstructing watercourse, drain, or ditch  
–fine of not less than twenty-five dollars nor more than one hundred dollars  
–imprisonment of not more than thirty days
- 31-226 Failure to clear watercourse, drain, or ditch after notice  
–fine of not more than ten dollars
- 31-366 Willfully obstruct, injure, or destroy ditch, drain, watercourse, or dike of drainage district  
–fine of not more than one hundred dollars
- 31-445 Obstruct ditch, drain, or watercourse or injure dike, levee, or other work of drainage district  
–fine of not more than one hundred dollars  
–imprisonment of not more than six months
- 31-507.01 Connection to sanitary sewer without permit

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**UNCLASSIFIED MISDEMEANORS**, see section 28-107

- 33-153 –fine of not less than twenty-five dollars nor more than one hundred dollars  
Failure to report and remit fees to county for taking acknowledgments, oaths, and affirmations  
–fine of not more than one hundred dollars
- 44-2504 Domestic insurer transacting unauthorized insurance business in reciprocal state  
–fine of not more than ten thousand dollars
- 54-1365 Violation of Nebraska Swine Brucellosis Act when not otherwise specified  
–fine of not less than one hundred dollars nor more than five hundred dollars  
–imprisonment of not more than thirty days  
–both
- 55-112 Failure to return or illegal use of military property  
–fine of not more than fifty dollars
- 60-684 Refusal to sign traffic citation  
–fine of not more than five hundred dollars  
–imprisonment of not more than three months  
–both
- 69-111 Security interest in personal property, failure to account or produce for inspection  
–fine of not less than five dollars nor more than one hundred dollars  
–imprisonment of not more than thirty days
- 74-918 Failure by railroad to supply drinking water and toilet facilities  
–fine of not less than one hundred dollars nor more than five hundred dollars
- 75-130 Failure by witness to testify or comply with subpoena of Public Service Commission  
–fine of not more than five thousand dollars
- 76-215 Failure to furnish real estate transfer tax statement  
–fine of not less than ten dollars nor more than five hundred dollars
- 76-218 Violations involving acknowledging and recording instruments of conveyance  
–fine of not more than five hundred dollars  
–imprisonment of not more than one year
- 76-239.05 Failure to apply construction financing for labor and materials  
–fine of not less than one hundred dollars nor more than one thousand dollars  
–imprisonment of not more than six months  
–both
- 76-2,108 Defrauding another by making a dual contract for purchase of real property or inducing the extension of credit  
–fine of not less than one hundred dollars nor more than five hundred dollars  
–imprisonment of not less than five days nor more than thirty days  
–both
- 77-1250.02 Owner, lessee, or manager of aircraft hangar or land upon which is parked or located any aircraft, fail to report aircraft to the county assessor  
–fine of not more than fifty dollars
- 77-1313 Failure of county officer to assist county assessor in assessment of property  
–fine of not less than fifty dollars nor more than five hundred dollars

APPENDIX

**UNCLASSIFIED MISDEMEANORS**, see section 28-107

- 77-1613.02 County assessor willfully reducing or increasing valuation of property without approval of county board of equalization  
–fine of not less than twenty dollars nor more than one hundred dollars
- 77-1918 County officers failing to perform duties related to foreclosure  
–removal from office
- 77-2703 Seller fails or refuses to furnish certified statement regarding a motor vehicle, motorboat, all-terrain vehicle, or utility-type vehicle transaction  
–fine of not less than twenty-five dollars nor more than one hundred dollars
- 77-2706 Giving a resale certificate to avoid sales tax
- 79-2,103 Soliciting membership in fraternity, society, or other association on school grounds  
–fine of not less than two dollars nor more than ten dollars
- 81-171 Using state mailing room or postage metering machine for private mail  
–fine of not less than twenty dollars nor more than one hundred dollars
- 83-114 Officer or employee interfering in an official Department of Health and Human Services investigation  
–fine of not less than ten dollars nor more than one hundred dollars
- 84-732 Governor or Attorney General knowingly failing or refusing to implement laws  
–fine of one hundred dollars  
–impeachment



## APPENDIX

## ACTS, CODES, AND OTHER NAMED LAWS

NAME OF ACT	WHERE CITED
Abstracters Act	76-535
Access College Early Scholarship Program Act	85-2101
Address Confidentiality Act	42-1201
Administrative Procedure Act	84-920
Adult Protective Services Act	28-348
Advanced Practice Registered Nurse Practice Act	38-201
Affordable Housing Tax Credit Act	77-2501
Age Discrimination in Employment Act	48-1001
Aging and Disability Resource Center Act	68-1111
Agricultural Liming Materials Act	2-4301
Agricultural Suppliers Lease Protection Act	2-5501
Air and Water Pollution Control Tax Refund Act	77-27,155
Airport Zoning Act	3-333
Alcohol and Drug Counseling Practice Act	38-301
Alzheimer's Special Care Disclosure Act	71-516.01
American Indian Arts and Crafts Sales Act	69-1801
Angel Investment Tax Credit Act	77-6301
Animal Importation Act	54-784.01
Anthrax Control Act	54-764
Arson Reporting Immunity Act	81-5,115
Asbestos Control Act	71-6317
Assault of an Unborn Child Act	28-395
Assisted-Living Facility Act	71-5901
Assistive Technology Regulation Act	69-2601
Assisting Caregiver Transitions Act	71-9401
Assumption Reinsurance Act	44-6201
Athletic Training Practice Act	38-401
Audiology and Speech-Language Pathology Practice Act	38-501
Autism Treatment Program Act	68-962
Automated Medication Systems Act	71-2444
Automatic Dialing-Announcing Devices Act	86-236
Automatic License Plate Reader Privacy Act	60-3201
Barber Act	71-224
Behavioral Health Workforce Act	71-828
Beginning Farmer Tax Credit Act	77-5201
Black-Tailed Prairie Dog Management Act	23-3801
Boiler Inspection Act	48-719
Bovine Tuberculosis Act	54-706.01
Brain Injury Registry Act	81-653
Buffer Strip Act	2-5101
Build Nebraska Act	39-2701
Building Construction Act	71-6401
Burial Pre-Need Sale Act	12-1101

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Business Corporation Act	21-2001
Business Development Partnership Act	81-1272
Business Improvement District Act	19-4015
Business Innovation Act	81-12,152
Cancer Drug Repository Program Act	71-2422
Captive Insurers Act	44-8201
Carbon Monoxide Safety Act	76-601
Center for Student Leadership and Expanded Learning Act	79-772
Certified Industrial Hygienist Title Protection Act	71-8001
Certified Nurse Midwifery Practice Act	38-601
Certified Registered Nurse Anesthetist Practice Act	38-701
Charitable Gift Annuity Act	59-1801
Child and Maternal Death Review Act	71-3404
Child Care Licensing Act	71-1908
Child Pornography Prevention Act	28-1463.01
Child Protection and Family Safety Act	28-710
Childhood Lead Poisoning Prevention Act	71-2513
Childhood Vaccine Act	71-526
Children and Family Behavioral Health Support Act	71-821
Children's Health and Treatment Act	68-2001
Children's Residential Facilities and Placing Licensure Act	71-1924
Chiropractic Practice Act	38-801
Cities Airport Authorities Act	3-514
Civic and Community Center Financing Act	13-2701
Civil Service Act	19-1825
Class V School Employees Retirement Act	79-978.01
Clinical Nurse Specialist Practice Act	38-901
Collection Agency Act	45-601
Combined Improvement Act	19-2415
Commercial Dog and Cat Operator Inspection Act	54-625
Commercial Feed Act	54-847
Commercial Real Estate Broker Lien Act	52-2101
Commission for the Blind and Visually Impaired Act	71-8601
Commodity Code	8-1701
Community College Aid Act	85-2231
Community College Gap Assistance Program Act	85-2001
Community Corrections Act	47-619
Community Development Assistance Act	13-201
Community Development Law	18-2101
Community Gardens Act	2-301
Compassion and Care for Medically Challenging Pregnancies Act	71-5001
Competitive Livestock Markets Act	54-2601
Comprehensive Health Insurance Pool Act	44-4201
Compressed Fuel Tax Act	66-697
Computer Crimes Act	28-1341
Concealed Handgun Permit Act	69-2427
Conciliation Court Law	42-802
Concussion Awareness Act	71-9101
Condominium Property Act	76-801
Conservation and Preservation Easements Act	76-2,118
Conservation Corporation Act	2-4201
Consumer Protection Act	59-1623

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Consumer Protection in Eye Care Act	69-308
Consumer Rental Purchase Agreement Act	69-2101
Contractor Registration Act	48-2101
Controlled Substances Animal Welfare Act	54-2501
Convention Center Facility Financing Assistance Act	13-2601
Conveyance Safety Act	48-2501
Convicted Sex Offender Act	29-2922
Coordinating Commission for Postsecondary Education Act	85-1401
Corporate Governance Annual Disclosure Act	44-9101
Correctional System Overcrowding Emergency Act	83-960
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act	38-1001
County Agricultural Society Act	2-250
County Budget Act of 1937	23-901
County Civil Service Act	23-2517
County Drainage Act	31-933
County Employees Retirement Act	23-2331
County Highway and City Street Superintendents Act	39-2301
County Horseracing Facility Bond Act	23-392
County Industrial Sewer Construction Act	23-3601
County Purchasing Act	23-3101
County Revenue Assistance Act	29-3919
Court Appointed Special Advocate Act	43-3701
Credit Report Protection Act	8-2601
Credit Services Organization Act	45-801
Credit Union Act	21-1701
Cremation of Human Remains Act	71-1355
Critical Incident Stress Management Act	71-7101
Dairy Industry Development Act	2-3948
Deferred Building Renewal Act	81-190
Degradable Products Act	69-2001
Delayed Birth Registration Act	71-617.01
Delayed Deposit Services Licensing Act	45-901
Dentistry Practice Act	38-1101
Developmental Disabilities Court-Ordered Custody Act	71-1101
Developmental Disabilities Services Act	83-1201
Dialysis Patient Care Technician Registration Act	38-3701
Diploma of High School Equivalency Assistance Act	79-2301
Direct Primary Care Agreement Act	71-9501
Direct Primary Care Pilot Program Act	84-1618
Disabled Persons and Family Support Act	68-1501
Disclosure of Material Insurance Transactions Act	44-6301
Discount Medical Plan Organization Act	44-8301
Disposition of Personal Property Landlord and Tenant Act	69-2301
Dispute Resolution Act	25-2901
DNA Identification Information Act	29-4101
DNA Testing Act	29-4116
Dog and Cat Purchase Protection Act	54-644
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Down Syndrome Diagnosis Information and Support Act	71-4101
Drinking Water State Revolving Fund Act	71-5314
Dry Bean Resources Act	2-3735

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Election Act	32-101
Electric Cooperative Corporation Act	70-701
Electronic Notary Public Act	64-301
Emergency Box Drug Act	71-2410
Emergency Management Act	81-829.36
Emergency Medical Services Practice Act	38-1201
Emergency Telephone Communications Systems Act	86-420
Employee Classification Act	48-2901
Employment and Investment Growth Act	77-4101
Employment Security Law	48-601
Engineers and Architects Regulation Act	81-3401
Enhanced Wireless 911 Services Act	86-442
Enterprise Zone Act	13-2101.01
Environmental Health Specialists Practice Act	38-1301
Environmental Protection Act	81-1532
Equipment Business Regulation Act	87-701
Erosion and Sediment Control Act	2-4601
Ethanol Development Act	66-1330
Excellence in Teaching Act	79-8,132
Exotic Animal Auction or Exchange Venue Act	54-7,105
Expanded Learning Opportunity Grant Program Act	79-2501
Exploited Children’s Civil Remedy Act	25-21,290
Extraterritorial Airports Act	3-244
Facilitating Business Rapid Response to State Declared Disasters Act	48-3201
False Medicaid Claims Act	68-934
Family Military Leave Act	55-501
Farm Homestead Protection Act	76-1901
Farm Labor Contractors Act	48-1701
Farm Mediation Act	2-4801
Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006	87-801
Food Supply Animal Veterinary Incentive Program Act	54-501
Foster Care Review Act	43-1318
Franchise Practices Act	87-410
Free Flow of Information Act	20-147
Funeral Directing and Embalming Practice Act	38-1401
Game Law	37-201
Genetic Counseling Practice Act	38-3401
Genetically Handicapped Persons Act	68-1401
Geologists Regulation Act	81-3501
Grain Dealer Act	75-901
Grain Sorghum Resources Act	2-4001
Grain Warehouse Act	88-525
Ground Emergency Medical Transport Act	68-977
Guaranteed Asset Protection Waiver Act	45-1101
Health and Human Services, Office of Juvenile Services Act	43-401
Health and Human Services Act	81-3110
Health Care Facility Licensure Act	71-401
Health Care Facility-Provider Cooperation Act	71-7701

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Health Care Professional Credentialing Verification Act	44-7001
Health Care Prompt Payment Act	44-8001
Health Care Purchasing Pool Act	44-6701
Health Care Quality Improvement Act	71-7904
Health Care Surrogacy Act	30-601
Health Carrier External Review Act	44-1301
Health Carrier Grievance Procedure Act	44-7301
Health Insurance Access Act	44-5301
Health Insurance Exchange Navigator Registration Act	44-8801
Health Maintenance Organization Act	44-3292
Hearing Instrument Specialists Practice Act	38-1501
high-rise building fire code (rules and regulations)	81-541.01
Home Care Consumer Bill of Rights Act	71-9301
Homeless Shelter Assistance Trust Fund Act	68-1601
Homicide of the Unborn Child Act	28-388
Hospital Authorities Act	23-3579
Hospital Sinking Fund Act	15-235.05
Human Trafficking Victims Civil Remedy Act	25-21,297
ICF/DD Reimbursement Protection Act	68-1801
Immunosuppressant Drug Repository Program Act	71-2436
In the Line of Duty Dependent Education Act	85-2301
Income Withholding for Child Support Act	43-1701
Indoor Tanning Facility Act	71-3901
Industrial Ground Water Regulatory Act	46-690
Industrial Relations Act	48-801.01
Infant Hearing Act	71-4734
Information Technology Infrastructure Act	86-501
Insurance Company Plan of Exchange Act	44-248
Insurance Fraud Act	44-6601
Insurance Holding Company System Act	44-2120
Insurance Producers Licensing Act	44-4047
Insured Homeowners Protection Act	44-8601
Insurers and Health Organizations Risk-Based Capital Act	44-6001
Insurers Demutualization Act	44-6101
Insurers Examination Act	44-5901
Insurers Investment Act	44-5101
Integrated Solid Waste Management Act	13-2001
Intergovernmental Data Services Program Act	86-550
Intergovernmental Risk Management Act	44-4301
Interlocal Cooperation Act	13-801
International Fuel Tax Agreement Act	66-1401
International Registration Plan Act	60-3,192
Interstate Branching and Merger Act	8-2101
Interstate Bridge Act of 1959, The	39-8,122
Interstate Trust Company Office Act	8-2301
Intrastate Pay-Per-Call Regulation Act	86-258
Invention Development Services Disclosure Act	87-601
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Investigational Drug Use Act	71-9601
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Joint Airport Authorities Act	3-716
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Judges Retirement Act	24-701.01
Juvenile Services Act	43-2401
Kelsey Smith Act	86-801
Land Reutilization Act	77-3213
Land Surveyors Regulation Act	81-8,108.01
Law Enforcement Education Act	85-2601
Learning Community Reorganization Act	79-4,117
Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act	7-201
Legislative Performance Audit Act	50-1201
Legislative Qualifications and Election Contests Act	50-1501
License Suspension Act	43-3301
Licensing of Truth and Deception Examiners Act	81-1901
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Livestock Animal Welfare Act	54-901
Livestock Auction Market Act	54-1156
Livestock Brand Act	54-170
Livestock Growth Act	54-2801
Livestock Waste Management Act	54-2416
Local Government Miscellaneous Expenditure Act	13-2201
Local Option Municipal Economic Development Act	18-2701
Local Option Revenue Act	77-27,148
Local Option Tax Control Act	77-3401
Long-Term Care Insurance Act	44-4501
Long-Term Care Ombudsman Act	81-2237
Long-Term Care Savings Plan Act	77-6101
Low-Level Radioactive Waste Disposal Act	81-1578
Mail Order Contact Lens Act	69-301
Mail Service Pharmacy Licensure Act	71-2406
Major Oil Pipeline Siting Act	57-1401
Managed Care Emergency Services Act	44-6825
Managed Care Plan Network Adequacy Act	44-7101
Managing General Agents Act	44-4901
Mandate Opt-Out and Insurance Coverage Clarification Act	44-8401
Massage Therapy Practice Act	38-1701
Master Teacher Program Act	79-8,124
Mechanical Amusement Device Tax Act	77-3011
Medicaid Prescription Drug Act	68-950
Medical Assistance Act	68-901
Medical Nutrition Therapy Practice Act	38-1801
Medical Radiography Practice Act	38-1901
Medicare Supplement Insurance Minimum Standards Act	44-3601
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Medicine and Surgery Practice Act	38-2001
Membership Campground Act	76-2101
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Motor Vehicle Industry Regulation Act	60-1401
Motor Vehicle Operator's License Act	60-462
Motor Vehicle Registration Act	60-301
Motor Vehicle Safety Responsibility Act	60-569
Motor Vehicle Service Contract Reimbursement Insurance Act	44-3520
Motorcycle Safety Education Act	60-2120
Multiple Employer Welfare Arrangement Act	44-7601
Municipal and Rural Domestic Ground Water Transfers Permit Act	46-650
Municipal Cooperative Financing Act	18-2401
Municipal Custodianship for Dissolved Homeowners Associations Act	18-3101
Municipal Infrastructure Redevelopment Fund Act	18-2601
Municipal Natural Gas System Condemnation Act	19-4624
Municipal Proprietary Function Act	18-2801
Museum Property Act	51-701
Music Licensing Agency Act	59-1401
Mutual Finance Assistance Act	35-1201
Mutual Insurance Holding Company Act	44-6122
Name Protection Act	21-2501
Native American Public Health Act	71-7615
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Nebraska Advantage Act	77-5701
Nebraska Advantage Microenterprise Tax Credit Act	77-5901
Nebraska Advantage Research and Development Act	77-5801
Nebraska Advantage Rural Development Act	77-27,187
Nebraska Advantage Transformational Tourism and Redevelopment Act	77-1001
Nebraska Affordable Housing Act	58-701
Nebraska Agricultural Products Marketing Act	2-3801
Nebraska Agritourism Promotion Act	82-601
Nebraska Amusement Ride Act	48-1801
Nebraska Apiary Act	81-2,165.01
Nebraska Appraisal Management Company Registration Act	76-3201
Nebraska Archaeological Resources Preservation Act	82-501
Nebraska Art Collection Act	82-401
Nebraska Bank Holding Company Act of 1995	8-908
Nebraska Banking Act	8-101.02
Nebraska Behavioral Health Services Act	71-801
Nebraska Benefit Corporation Act	21-401
Nebraska Bingo Act	9-201
Nebraska Bovine Brucellosis Act	54-1367
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Nebraska Clean-burning Motor Fuel Development Act	66-201
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Nebraska Collegiate Athletic Association Procedures Act	85-1201
Nebraska Commercial Fertilizer and Soil Conditioner Act	81-2,162.22
Nebraska Community Aging Services Act	81-2201
Nebraska Condominium Act	76-825
Nebraska Construction Lien Act	52-125
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Nebraska Consultants' Competitive Negotiation Act	81-1702
Nebraska Corn Resources Act	2-3601
Nebraska Correctional Health Care Services Act	83-4,153
Nebraska County and City Lottery Act	9-601
Nebraska County Juvenile Services Plan Act	43-3501
Nebraska Crime Victim's Reparations Act	81-1841
Nebraska Criminal Code	28-101
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Nebraska Educational, Health, and Social Services Finance Authority Act	58-801
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Nebraska Elementary and Secondary School Finance Authority Act	79-1801
Nebraska Emergency Planning and Community Right to Know Act	81-15,191
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Nebraska Energy Code	81-1611
Nebraska Environmental Trust Act	81-15,167
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Nebraska Foreclosure Protection Act	76-2701
Nebraska General Emergency Succession Act	84-1101
Nebraska Governmental Unit Credit Facility Act	10-1201
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Nebraska Ground Water Management and Protection Act	46-701
Nebraska Health Care Certificate of Need Act	71-5801
Nebraska Health Care Funding Act	71-7605
Nebraska Highway Bond Act	39-2222
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Nebraska Hospital and Physicians Mutual Insurance Association Act	44-2918
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Nebraska Liquor Control Act	53-101
Nebraska Litter Reduction and Recycling Act	81-1534
Nebraska Livestock Dealer Licensing Act	54-1702
Nebraska Livestock Sellers Protective Act	54-1801
Nebraska Local Hospital District Act	23-3528
Nebraska Lottery and Raffle Act	9-401
Nebraska Meat and Poultry Inspection Law	54-1901
Nebraska Mental Health Commitment Act	71-901
Nebraska Mental Health First Aid Training Act	71-3001
Nebraska Milk Act	2-3965
Nebraska Model Business Corporation Act	21-201
Nebraska Money Transmitters Act	8-2701
Nebraska Municipal Auditing Law	19-2901
Nebraska Municipal Land Bank Act	19-5201
Nebraska Natural Gas Pipeline Safety Act of 1969	81-552
Nebraska Nonprofit Corporation Act	21-1901
Nebraska Nursing Home Act	71-6037
Nebraska Operational Assistance Act	81-12,129
Nebraska Opportunity Grant Act	85-1901
Nebraska Pickle Card Lottery Act	9-301
Nebraska Plane Coordinate System Act	76-2501
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Nebraska Potato Development Act	2-1801
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Nebraska Poultry and Egg Resources Act	2-3401
Nebraska Poultry Disease Control Act	2-3001
Nebraska Probate Code	30-2201
Nebraska Probation Administration Act	29-2269
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Nebraska Protection in Annuity Transactions Act	44-8101
Nebraska Public Safety Communication System Act	86-401
Nebraska Public Transportation Act	13-1201
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Nebraska Right to Shop Act	44-1401
Nebraska Rules of the Road	60-601
Nebraska Safe Drinking Water Act	71-5313
Nebraska Safety Code for Building Construction	48-413
Nebraska Security Instrument Satisfaction Act	76-2801
Nebraska Seed Law	81-2,147
Nebraska Senior Volunteer Program Act	81-2273
Nebraska Shooting Range Protection Act	37-1301
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Nebraska Small Lottery and Raffle Act	9-501
Nebraska Soil and Plant Analysis Laboratory Act	2-3101
Nebraska Soil and Water Conservation Act	2-1575
Nebraska State Capitol Environs Act	90-301
Nebraska State Capitol Preservation and Restoration Act	72-2201
Nebraska State Funds Investment Act	72-1260
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Nebraska Strengthening Families Act	43-4701
Nebraska Swine Brucellosis Act	54-1366
Nebraska Telecommunications Regulation Act	86-101
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Nebraska Telehealth Act	71-8501
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Nebraska Treatment and Corrections Act	83-1,135
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Nebraska Trust Deeds Act	76-1018
Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	30-3901
Nebraska Uniform Athlete Agents Act	48-2601
Nebraska Uniform Custodial Trust Act	30-3501
Nebraska Uniform Enforcement of Foreign Judgments Act	25-1587.01
Nebraska Uniform Limited Liability Company Act	21-101
Nebraska Uniform Limited Partnership Act	67-296
Nebraska Uniform Power of Attorney Act	30-4001
Nebraska Uniform Protected Series Act	21-501
Nebraska Uniform Prudent Management of Institutional Funds Act	58-610
Nebraska Uniform Real Property Transfer on Death Act	76-3401
Nebraska Uniform Standards for Modular Housing Units Act	71-1555
Nebraska Uniform Transfers to Minors Act	43-2701
Nebraska Uniform Trust Code	30-3801
Nebraska Veterans Services Act	80-301.01
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	4	38-1004	65	38-10,158.08		6 76-2207.17
	5	38-1005	66	38-10,171		7 76-2207.18
	6	38-1017	67	38-2801		8 76-2207.19
	7	38-1018	68	38-2802		9 76-2207.20
	8	38-1028	69	38-2833		10 76-2207.21
	9	38-1033.01	70	38-2843.02		11 76-2207.22
	10	38-1033.02	71	38-2843.03		12 76-2207.23
	11	38-1036	72	38-2843.04		13 76-2207.24
	12	38-1038	73	38-2847		14 76-2207.25
	13	38-1043	74	38-2870		15 76-2207.26
	14	38-1058	75	38-2891		16 76-2207.27
	15	38-1061	76	38-2892		17 76-2207.28
	16	38-1062	77	38-28,106		18 76-2207.29
	17	38-1063	78	38-3208		19 76-2207.30
	18	38-1065	79	71-202.01		20 76-2207.31
	19	38-1066	80	71-203		21 76-2207.32
	20	38-1069	81	71-204		22 76-2215
	21	38-1070	82	71-208		23 76-2216.02
	22	38-1073	83	71-208.08		24 76-2218.02
	23	38-1074	84	71-249		25 76-2219.01
	24	38-1075	85	71-250		26 76-2220
	25	38-1086	86	71-251		27 76-2221
	26	38-1097	87	71-252		28 76-2222
	27	38-1099	88	71-253		29 76-2227
	28	38-10,100	89	71-254		30 76-2233
	29	38-10,102	90	71-255		31 76-2233.03
	30	38-10,103	91	71-224		32 76-2236
	31	38-10,104	92	71-401		33 76-2236.01
	32	38-10,105	93	71-403		34 76-2238
	33	38-10,107	94	71-425		35 76-2245
	34	38-10,108	95	71-427.02		36 76-2246
	35	38-10,112	96	71-427.03		37 76-2247.01
	36	38-10,120	97	71-427.04		38 Omitted
	37	38-10,125.01	98	71-436.02		39 Omitted
	38	38-10,125.02	99	71-2448		40 Omitted
	39	38-10,125.03	100	71-2483	LB 742	§ 1 87-404

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		2 Omitted		23	50-1516		15	37-1714
		3 Omitted		24	50-1517		16	37-1715
LB 743	§	1 44-9201		25	50-1518		17	37-1716
		2 44-9202		26	50-1519		18	37-1717
		3 44-9203		27	50-1520		19	37-1718
		4 44-9204		28	Omitted		20	37-1719
		5 44-9205		29	Omitted		21	37-1720
		6 44-9206		30	Omitted		22	37-1721
		7 44-9207	LB 745	§	1 77-2708		23	37-1722
		8 44-9208			2 Omitted		24	37-1723
		9 44-9209	LB 749	§	1 21-1905		25	37-1724
		10 44-9210			2 33-101		26	37-1725
		11 44-9211			3 Omitted		27	37-1726
		12 44-9212	LB 750	§	1 45-737		28	37-1727
		13 44-9213			2 76-238		29	37-1728
		14 44-9214			3 76-252		30	37-1729
		15 44-9215			4 76-1014.01		31	37-1730
		16 44-9216			5 76-2803		32	37-1731
		17 44-9217			6 Omitted		33	37-1732
		18 44-9218	LB 751	§	1 84-901.01		34	73-101
		19 44-9219			2 84-910		35	73-307
		20 44-2607			3 Omitted		36	81-1701
		21 44-2614	LB 757	§	1 8-2602		37	Omitted
		22 44-3905			2 8-2603.01	LB 776	§	1 47-101
		23 44-3908			3 8-2608.02		2	47-101.01
		24 44-4053			4 8-2609		3	47-101.02
		25 44-4056			5 8-2609.01		4	47-108
		26 44-4068			6 87-801		5	47-109
		27 44-4521			7 87-808		6	47-116
		28 44-8105			8 87-806		7	47-201
		29 44-8108			9 Omitted		8	47-201.01
		30 44-8601	LB 758	§	1 46-1701		9	47-201.02
		31 44-8602			2 Omitted		10	47-206
		32 44-8605	LB 760	§	1 77-3101		11	Omitted
		33 44-8606			2 77-3102	LB 786	§	1 23-1304
		34 44-8607			3 77-3103		2	23-1311
		35 44-8608			4 77-3104		3	23-1402
		36 Omitted			5 77-3105		4	23-1403
		37 Omitted			6 77-3106		5	23-1602
LB 744	§	1 32-1101			7 Omitted		6	23-1603
		2 32-1105			8 Omitted		7	23-1605
		3 32-1111	LB 766	§	1 34-112.02		8	23-1612
		4 32-1112			2 Omitted		9	23-2504
		5 32-1114	LB 773	§	1 28-632		10	23-2506
		6 32-1115			2 28-634		11	23-2507
		7 32-1116			3 28-1310		12	23-2510
		8 50-1501			4 Omitted		13	23-2514
		9 50-1502	LB 775	§	1 37-201		14	23-2528
		10 50-1503			2 37-1701		15	Omitted
		11 50-1504			3 37-1702	LB 791	§	1 81-1456
		12 50-1505			4 37-1703		2	81-1457
		13 50-1506			5 37-1704		3	81-1377
		14 50-1507			6 37-1705		4	81-1425
		15 50-1508			7 37-1706		5	81-1395
		16 50-1509			8 37-1707		6	Omitted
		17 50-1510			9 37-1708		7	Omitted
		18 50-1511			10 37-1709		8	Omitted
		19 50-1512			11 37-1710	LB 793	§	1 68-1111
		20 50-1513			12 37-1711		2	68-1113
		21 50-1514			13 37-1712		3	68-1114
		22 50-1515			14 37-1713		4	68-1115

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	6 68-1117		9 47-629		12 30-712
	7 68-1118		10 47-903		13 30-713
	8 68-1119		11 47-908		14 30-1601
	9 68-1120		12 47-919		15 30-2201
	10 71-7611		13 71-961		16 42-364.18
	11 83-1201		14 81-1401		17 42-364
	12 83-1216		15 83-170		18 Omitted
	13 83-1216.02		16 83-171	LB 847	§ 1 30-2316
	14 Omitted		17 83-174.03		2 Omitted
	15 Omitted		18 83-174.04	LB 848	§ 1 28-1206
	16 Omitted		19 83-174.05		2 Omitted
	17 Omitted		20 83-184	LB 859	§ 1 84-712.05
	18 Omitted		21 83-191		2 Omitted
	19 Omitted		22 83-192	LB 861	§ 1 81-8,236
LB 799	§ 1 44-5511		23 83-192.01	LB 865	§ 1 14-137
	2 44-5512		24 83-198		2 15-404
	3 Omitted		25 83-1,100		3 16-404
LB 803	§ 1 79-1104		26 83-1,100.02		4 17-614
	2 Omitted		27 83-1,101		5 Omitted
LB 807	§ 1 82-701		28 83-1,102	LB 874	§ 1 13-2610
	2 82-702		29 83-1,103		2 15-1301
	3 82-703		30 83-1,103.01		3 17-405.01
	4 82-704		31 83-1,103.02		4 18-2101
	5 82-705		32 83-1,103.03		5 18-2101.01
	6 82-706		33 83-1,103.04		6 18-2102.01
	7 82-707		34 83-1,104		7 18-2103
	8 Omitted		35 83-1,107		8 18-2104
LB 807A	Omitted		36 83-1,107.01		9 18-2107
LB 812	§ 1 8-135		37 83-1,107.02		10 18-2109
	2 8-143.01		38 83-1,109		11 18-2113
	3 8-157.01		39 83-1,110.02		12 18-2115
	4 8-167.01		40 83-1,111		13 18-2115.01
	5 8-183.04		41 83-1,112		14 18-2116
	6 8-1,140		42 83-1,112.01		15 18-2117.01
	7 8-318		43 83-1,114		16 18-2117.02
	8 8-355		44 83-1,118		17 18-2117.03
	9 21-17,115		45 83-1,119		18 18-2117.04
	10 Omitted		46 83-1,120		19 18-2119
	11 Omitted		47 83-1,121		20 18-2122
LB 815	§ 1 44-416.06		48 83-1,122.01		21 18-2125
	2 44-416.07		49 83-1,125		22 18-2127
	3 44-416.09		50 83-1,125.01		23 18-2129
	4 Omitted		51 83-1,135		24 18-2133
LB 827	§ 1 80-301.01		52 83-1,135.02		25 18-2134
	2 80-337		53 83-4,157		26 18-2137
	3 81-1316		54 83-933		27 18-2138
	4 83-153		55 83-906		28 18-2140
	5 83-154		56 83-907		29 18-2141
	6 83-155		57 Omitted		30 18-2142.01
	7 83-156		58 Omitted		31 18-2143
	8 Omitted	LB 845	§ 1 30-701		32 18-2144
LB 840	§ 1 43-1303		2 30-702		33 18-2145
	2 Omitted		3 30-703		34 18-2147
LB 841	§ 1 28-322		4 30-704		35 18-2153
	2 29-2252		5 30-705		36 77-1704.01
	3 29-2261		6 30-706		37 Omitted
	4 29-2935		7 30-707	LB 885	§ 1 77-1502
	5 29-4019		8 30-708		2 Omitted
	6 47-624		9 30-709		3 Omitted
	7 47-624.01		10 30-710	LB 889	§ 1 81-502

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	2 81-502.04	24	60-146	85	60-4,130.04
	3 81-503.01	25	60-148	86	60-4,131
	4 Omitted	26	60-149	87	60-4,131.01
	5 Omitted	27	60-164	88	60-4,132
LB 901	§ 1 3-402	28	60-164.01	89	60-4,147.02
	2 3-404	29	60-166	90	60-4,134
	3 Omitted	30	60-168.01	91	60-4,182
LB 902	§ 1 84-712.05	31	60-169	92	60-501
	2 Omitted	32	60-171	93	60-601
LB 903	§ 1 81-2225	33	60-173	94	60-610.01
	2 81-2237	34	60-174	95	60-628.01
	3 81-2238	35	60-175	96	60-639
	4 81-2239	36	60-191	97	60-640
	5 81-2242	37	60-192	98	60-6,378.01
	6 81-2243	38	60-301	99	60-6,226
	7 81-2244	39	60-302	100	60-6,244
	8 81-2245	40	60-310.01	101	60-6,254
	9 81-2247	41	60-314.01	102	60-6,255
	10 81-2247.01	42	60-309	103	60-6,263
	11 81-2247.02	43	60-309.01	104	60-6,267
	12 81-2247.03	44	60-316	105	60-6,279
	13 81-2248	45	60-335	106	60-6,294
	14 81-2250	46	60-336.01	107	60-6,298
	15 81-2251	47	60-336.02	108	60-6,306
	16 81-2252	48	60-340	109	60-6,307
	17 81-2253	49	60-346.02	110	60-6,308
	18 81-2254	50	60-346.03	111	60-6,313
	19 81-2255	51	60-348	112	60-1401
	20 81-2258	52	60-354	113	60-1401.02
	21 81-2259	53	60-363	114	60-1401.43
	22 81-2260	54	60-378	115	60-1441
	23 81-2261	55	60-386	116	60-1401.28
	24 81-2262	56	60-389	117	60-1401.42
	25 81-2264	57	60-395	118	60-1508
	26 Omitted	58	60-3,100	119	60-1507
	27 Omitted	59	60-3,104	120	69-2441
LB 906	§ 1 28-405	60	60-3,113.02	121	75-363
	2 Omitted	61	60-3,113.03	122	75-364
LB 909	§ 1 28-1204.04	62	60-3,113.04	123	75-366
	2 37-1280	63	60-3,143	124	75-369.03
	3 37-1283	64	60-3,147	125	75-392
	4 37-1285	65	60-3,148	126	75-393
	5 37-1285.01	66	60-3,185	127	Omitted
	6 37-1293	67	60-3,187	128	Omitted
	7 60-101	68	60-3,190	129	Omitted
	8 60-102	69	60-3,193.01	LB 913	§ 1 28-929.02
	9 60-104	70	60-3,221		2 28-934
	10 60-104.01	71	60-3,228		3 Omitted
	11 60-104.02	72	60-3,229	LB 923	§ 1 28-470
	12 60-107.01	73	60-462		2 53-180.05
	13 60-119	74	60-462.01		3 53-181
	14 60-119.01	75	60-463.02		4 Omitted
	15 60-124	76	60-479.01	LB 931	§ 1 28-101
	16 60-128.01	77	60-480		2 28-401.01
	17 60-128.02	78	60-484		3 28-473
	18 60-129	79	60-4,122		4 28-474
	19 60-133	80	60-4,123		5 28-475
	20 60-142.04	81	60-4,123.01		6 Omitted
	21 60-142.05	82	60-4,124	LB 936	§ 1 50-1209
	22 60-142.06	83	60-4,127		2 Omitted
	23 60-142.11	84	60-4,128	LB 940	§ 1 13-2703

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	2	13-2704.01	56	Omitted	117	Omitted
	3	13-2705	57	Omitted	118	Omitted
	4	13-2707	58	Omitted	119	Omitted
	5	Omitted	59	Omitted	120	Omitted
	6	Omitted	60	Omitted	121	Omitted
LB 940A		Omitted	61	Omitted	122	Omitted
LB 944	§ 1	Omitted	62	Omitted	123	Omitted
	2	Omitted	63	Omitted	124	Omitted
	3	Omitted	64	Omitted	125	Omitted
	4	Omitted	65	Omitted	126	Omitted
	5	Omitted	66	Omitted	127	Omitted
	6	Omitted	67	Omitted	128	Omitted
	7	Omitted	68	Omitted	129	Omitted
	8	Omitted	69	Omitted	130	Omitted
	9	Omitted	70	Omitted	131	Omitted
	10	Omitted	71	Omitted	132	Omitted
	11	Omitted	72	Omitted	133	Omitted
	12	Omitted	73	Omitted	134	Omitted
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	17	Omitted	78	Omitted	139	Omitted
	18	Omitted	79	Omitted	140	Omitted
	19	Omitted	80	Omitted	141	Omitted
	20	Omitted	81	Omitted	142	Omitted
	21	Omitted	82	Omitted	143	Omitted
	22	Omitted	83	Omitted	144	Omitted
	23	Omitted	84	Omitted	145	Omitted
	24	Omitted	85	Omitted	146	Omitted
	25	Omitted	86	Omitted	147	Omitted
	26	Omitted	87	Omitted	148	Omitted
	27	Omitted	88	Omitted	149	Omitted
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	30	Omitted	91	Omitted	152	Omitted
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	36	Omitted	97	Omitted	158	Omitted
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	39	Omitted	100	Omitted	161	Omitted
	40	Omitted	101	Omitted	162	Omitted
	41	Omitted	102	Omitted	163	Omitted
	42	90-561	103	Omitted	164	Omitted
	43	Omitted	104	Omitted	165	Omitted
	44	Omitted	105	Omitted	166	Omitted
	45	Omitted	106	Omitted	167	Omitted
	46	Omitted	107	Omitted	168	Omitted
	47	Omitted	108	Omitted	169	Omitted
	48	Omitted	109	Omitted	LB 945	§ 1 Omitted
	49	Omitted	110	Omitted		2 Omitted
	50	Omitted	111	Omitted		3 Omitted
	51	Omitted	112	Omitted		4 Omitted
	52	Omitted	113	Omitted		5 Omitted
	53	Omitted	114	Omitted		6 Omitted
	54	Omitted	115	Omitted		7 Omitted
	55	Omitted	116	Omitted		8 81-1220



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	9 9-1,101		4 86-462	21	79-905
	10 37-327.02		5 86-465	22	79-907
	11 48-1,116		6 86-466	23	79-915
	12 49-14,140		7 86-904	24	79-924
	13 58-703		8 86-1001	25	79-926
	14 59-1608.04		9 86-1004	26	79-933.01
	15 61-218		10 86-1006.01	27	79-933.02
	16 61-224		11 86-1025.01	28	79-933.03
	17 71-7611		12 86-1025	29	79-933.04
	18 81-2,162.27		13 86-1026	30	79-933.07
	19 81-1121		14 86-1029.01	31	79-978
	20 81-1201.21		15 86-1029.02	32	79-9,113
	21 81-1210.04		16 86-1029.03	33	79-1003
	22 81-1211		17 86-1027	34	79-1028.01
	23 81-3701		18 86-1028	35	81-2014
	24 81-3728		19 Omitted	36	81-2019
	25 81-3729		20 Omitted	37	81-2019.01
	26 81-3714		21 Omitted	38	81-2026
	27 84-1227	LB 993A	Omitted	39	81-2031.03
	28 Omitted	LB 994	§ 1 86-1101	40	81-2031.04
	29 Omitted		2 86-1102	41	84-1301
	30 Omitted		3 86-1103	42	84-1305
	31 Omitted		4 86-330	43	84-1305.02
	32 Omitted		5 75-160	44	84-1310.01
LB 946	§ 1 84-612		6 77-2704.51	45	84-1311.03
	2 Omitted		7 86-579	46	84-1312
	3 Omitted		8 Omitted	47	84-1313
LB 950	§ 1 Omitted		9 Omitted	48	84-1325
LB 953	§ 1 48-139		10 Omitted	49	84-1503
	2 48-2907		11 Omitted	50	85-122
	3 48-2911	LB 994A	Omitted	51	85-123.01
	4 Omitted	LB 1000	§ 1 13-809	52	Omitted
LB 957	§ 1 48-125		2 13-2531	53	Omitted
	2 Omitted		3 72-2301	54	Omitted
LB 982	§ 1 43-2101		4 72-2304	55	Omitted
	2 Omitted		5 72-2309	56	Omitted
LB 983	§ 1 29-4205		6 72-2310	LB 1008	§ 1 37-613
	2 Omitted		7 Omitted	2	57-904
LB 989	§ 1 60-3301		8 Omitted	3	70-673
	2 60-3302	LB 1003	§ 1 55-160	4	70-1015
	3 60-3303		2 Omitted	5	81-15,160
	4 60-3304	LB 1005	§ 1 23-2302	6	Omitted
	5 60-3305		2 23-2305	7	Omitted
	6 60-3306		3 23-2305.01	8	Omitted
	7 60-3307		4 23-2306	9	Omitted
	8 60-3308		5 23-2306.02	10	Omitted
	9 60-3309		6 23-2306.03	LB 1009	§ 1 39-2103
	10 60-3310		7 23-2309.01	2	60-4,182
	11 60-3311		8 23-2310.05	3	60-601
LB 990	§ 1 28-101		9 23-2323.01	4	60-605
	2 28-1201		10 23-2323.02	5	60-667.01
	3 28-1204.05		11 23-2323.03	6	60-6,186
	4 28-1351		12 23-3527	7	Omitted
	5 28-1354		13 24-704	LB 1012	§ 1 44-3903
	6 43-261.01		14 24-704.01	2	44-4047
	7 43-2,129		15 24-710	3	44-4052
	8 Omitted		16 24-710.05	4	44-4069
LB 990A	Omitted		17 24-710.06	5	Omitted
LB 993	§ 1 86-442		18 79-902	6	Omitted
	2 86-458		19 79-904	LB 1030	§ 1 13-2816
	3 86-459		20 79-904.01	2	77-2703.01

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		4 Omitted		61 71-1913		20 79-2601
LB 1034	§ 1	28-401		62 71-1917		21 79-2602
	2	28-470		63 71-2411		22 79-2603
	3	29-2261		64 71-2445		23 79-2604
	4	38-122		65 71-2454		24 79-2605
	5	38-131		66 71-4204		25 79-2606
	6	38-319		67 71-4205		26 79-2607
	7	38-321		68 71-4209		27 Omitted
	8	38-1201		69 38-3801		28 Omitted
	9	38-1204		70 38-3901	LB 1081A	§ 1 90-561
	10	38-1204.01		71 77-2704.12		2 Omitted
	11	38-1205		72 Omitted	LB 1089	§ 1 77-118
	12	38-1206.01	LB 1034A	Omitted		2 77-376
	13	38-1207.01	LB 1036	§ 1 13-2203		3 77-2791
	14	38-1207.02		2 Omitted		4 77-3501.01
	15	38-1208	LB 1038	§ 1 32-206		5 77-3505.02
	16	38-1208.01		2 32-304		6 77-3506
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	18	38-1215		4 Omitted		8 77-3506.03
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	24	38-1221		2 79-11,157		14 77-3510
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	27	38-1229		2 32-301.01		17 77-3514
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	29	38-1237		4 32-304		19 77-3516
	30	38-2025		5 32-330		20 77-3522
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	33	38-2112		8 Omitted		23 Omitted
	34	38-2115	LB 1070	§ 1 79-499		24 Omitted
	35	38-2117		2 Omitted		25 Omitted
	36	38-2122	LB 1078	§ 1 43-285		26 Omitted
	37	38-2123		2 43-1303	LB 1090	§ 1 77-2715.03
	38	38-2124		3 43-1311.02		2 77-2716.01
	39	38-2125		4 43-4318		3 Omitted
	40	38-2518		5 43-4406	LB 1090A	Omitted
	41	38-2519		6 Omitted	LB 1091	§ 1 49-801.01
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	15 44-1405		24 53-148.01		18 21-517
	16 44-1406		25 53-177		19 21-518
	17 44-1407		26 53-177.01		20 21-519
	18 44-1408		27 53-186.01		21 21-520
	19 44-1409		28 53-1,100		22 21-521
	20 44-1410		29 53-1,115		23 21-522
	21 44-1411		30 59-1401		24 21-523
	22 44-1412		31 59-1402		25 21-524
	23 44-1413		32 59-1403		26 21-525
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	18 53-134.01		12 21-511		2 29-3005
	19 53-134.03		13 21-512		3 29-3523
	20 53-134.04		14 21-513		4 84-218
	21 53-135		15 21-514		5 Omitted



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Showing the date each act went into effect.  
Convened January 3, 2018, and adjourned April 18, 2018.

LB No.	Effective Date	LB No.	Effective Date
17	July 19, 2018		operative on July 19,
42	January 1, 2019 (operative date)	285	2018. July 19, 2018
78	July 19, 2018	299	July 1, 2019 (operative date)
93	July 19, 2018	304	July 19, 2018
96	July 19, 2018	310	July 19, 2018
100	July 19, 2018	321	July 19, 2018
104	July 19, 2018	345	July 19, 2018
105	July 19, 2018	347	January 1, 2019 (operative date)
117	July 19, 2018	377	January 1, 2019 (operative date)
130	July 19, 2018	379	April 5, 2018
135	July 19, 2018	399	July 19, 2018
146	July 19, 2018	439	July 19, 2018
157	July 19, 2018	439A	July 19, 2018
160	July 19, 2018	472	July 19, 2018
177	July 19, 2018	480	July 19, 2018
193	Sections 75, 87, and 95 of this act become operative on January 1, 2019. The other sections of this act become operative on July 19, 2018.	486	July 19, 2018
194	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 23 of this act become operative on January 1, 2019. The other sections of this act become operative on July 19, 2018.	496	July 19, 2018
198	July 19, 2018	497	July 19, 2018
256	July 19, 2018	596	July 19, 2018
258	July 1, 2020 (operative date)	614	July 19, 2018
275	Sections 2 and 8 of this act become operative on January 1, 2019. The other sections of this act become	618	July 19, 2018
		629	July 19, 2018
		668	July 19, 2018
		669	July 19, 2018
		670	Sections 1, 2, 4, 7, 8, 15, 16, 17, and 20 of this act become operative on July 19, 2018. The other sections of this act become operative on April 24, 2018.
		682	July 19, 2018
		685	July 19, 2018
		697	July 19, 2018
		701	July 19, 2018

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LB No.	Effective Date	LB No.	Effective Date
702	July 19, 2018	803	July 19, 2018
708	July 19, 2018	807	April 24, 2018
710	July 19, 2018	807A	April 24, 2018
714	July 19, 2018	812	April 12, 2018
717	July 19, 2018	815	July 19, 2018
724	July 19, 2018	827	July 19, 2018
729	July 19, 2018	840	July 19, 2018
731	Sections 37, 38, 39, 40, 41, 42, 43, 44, 58, 59, 60, 61, 62, 63, 64, 65, 79, 84, 85, 86, 87, 88, 89, 90, 91, and 105 of this act become operative on January 1, 2019. The other sections of this act become operative on July 19, 2018.	841	July 19, 2018
731A	July 19, 2018	845	July 19, 2018
732	July 19, 2018	847	July 19, 2018
733	October 1, 2018 (operative date)	848	July 19, 2018
738	July 19, 2018	859	July 19, 2018
738A	July 19, 2018	861	July 19, 2018
741	April 12, 2018	865	July 19, 2018
742	April 12, 2018	874	July 19, 2018
743	July 19, 2018	885	January 1, 2019 (operative date)
744	July 19, 2018	889	July 19, 2018
745	July 19, 2018	901	July 19, 2018
749	July 19, 2018	902	July 19, 2018
750	July 19, 2018	903	April 12, 2018
751	July 19, 2018	906	July 19, 2018
757	July 19, 2018	909	April 12, 2018
758	March 1, 2018	913	July 19, 2018
760	April 12, 2018	923	July 19, 2018
766	July 19, 2018	931	July 19, 2018
773	July 19, 2018	936	July 19, 2018
775	July 19, 2018	940	April 12, 2018
776	July 19, 2018	940A	April 12, 2018
786	July 19, 2018	944	April 5, 2018
791	April 24, 2018	945	April 5, 2018
793	Sections 11, 12, 13, and 17 of this act become operative on July 19, 2018. The other sections of this act become operative on April 24, 2018.	946	April 5, 2018
799	July 19, 2018	950	April 5, 2018
		953	July 19, 2018
		957	July 19, 2018
		982	July 19, 2018
		983	July 19, 2018
		989	July 19, 2018
		990	July 19, 2018
		990A	July 19, 2018
		993	April 5, 2018
		993A	April 5, 2018
		994	Sections 1, 2, 3, 4, 5, 7, and 9 of this act become operative on July 1, 2018. Sections 6 and 10 of this act become operative on October 1, 2018. The other

CROSS REFERENCE TABLE

LB No.	Effective Date	LB No.	Effective Date
	sections of this act become operative on April 18, 2018.	1034A	July 19, 2018
994A	July 19, 2018	1036	July 19, 2018
1000	April 18, 2018	1038	April 18, 2018
1003	July 19, 2018	1040	July 19, 2018
1005	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, and 54 of this act become operative on July 19, 2018. The other sections of this act become operative on April 24, 2018.	1052	July 19, 2018
1008	Sections 1, 2, 5, and 9 of this act become operative on July 19, 2018. The other sections of this act become operative on April 12, 2018.	1065	July 1, 2019 (operative date)
1009	July 19, 2018	1070	July 19, 2018
1012	October 1, 2018 (operative date)	1078	July 19, 2018
1030	January 1, 2021 (operative date)	1081	July 19, 2018
1034	July 19, 2018	1081A	July 19, 2018
		1089	Sections 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, and 25 of this act become operative on January 1, 2019. The other sections of this act become operative on April 18, 2018.
		1090	July 19, 2018
		1090A	July 19, 2018
		1091	April 12, 2018
		1098	July 19, 2018
		1110	July 19, 2018
		1119	July 19, 2018
		1120	July 19, 2018
		1121	January 1, 2021 (operative date)
		1132	July 19, 2018





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