

## LEGISLATIVE BILL 884

Approved by the Governor April 4, 1994

Introduced by Kristensen, 37

AN ACT relating to limited liability companies; to amend sections 2-1816, 2-1825, 2-2406, 21-2070, 21-2071, 21-2075, 21-2076, 48-125.01, 54-726.04, 54-761, 54-1510, 54-1802, and 67-248.02, Reissue Revised Statutes of Nebraska, 1943, section 54-1603, Revised Statutes Supplement, 1992, and sections 1-157, 1-168, 2-1091.01, 2-2624, 2-2635, 2-5002, 8-1101, 8-1102, 8-1103, 8-1109, 8-1118, 8-1717.01, 9-1,104, 9-620, 9-642, 9-826, 9-834, 21-2601, 21-2602, 21-2605, 21-2606, 21-2610, 21-2611, 21-2612, 21-2614, 21-2615, 21-2619, 21-2620, 21-2621, 21-2622, 21-2628, 21-2631, 21-2632, 21-2634, 25-1081, 28-613, 29-1507, 30-2717, 37-101, 44-2821, 44-2824, 44-2837, 44-32,125, 44-5903, 48-115, 48-652, 48-1704, 49-1408, 54-1902, 54-2001, 59-812, 59-814, 59-1735, 59-1739, 60-348, 60-6,247, 60-6,291, 60-1411.02, 66-729, 67-251, 71-2023, 75-139.01, 75-909, 77-1201, 77-2730, 77-27,188.01, 77-27,194, 81-8,127, 88-543, and 88-545, Revised Statutes Supplement, 1993; to change provisions relating to limited liability companies; to require and provide for a registration certificate for limited liability companies providing professional services; to provide for and change fees; to provide for applicability to attorneys at law; to eliminate a tax and a tax credit; to provide merger and consolidation procedures; to correct internal references changed by Laws 1993, LB 121, section 347; to provide and change penalties; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 1-157, Revised Statutes Supplement, 1993, be amended to read as follows:

1-157. No person shall sign or affix his or her name or any trade or assumed name used by him or her in his or her profession or business with any wording indicating that he or she is an accountant or auditor or with any wording indicating that he or she has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he or she holds a live permit issued under section 1-136 and all of his or her offices in this state for the practice of public accounting are maintained and registered under section 1-135. This section shall not prohibit any officer, employee, partner, limited liability company member, or principal of any organization from affixing his or her signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he or she holds in the organization, nor shall this section prohibit any act of a public official or public employee in the performance of his or her duties as such.

Sec. 2. That section 1-168, Revised Statutes Supplement, 1993, be amended to read as follows:

1-168. All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such accountant in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners or limited liability company members or new partners or limited liability company members of such accountant.

Sec. 3. That section 2-1091.01, Revised Statutes Supplement, 1993, be amended to read as follows:

2-1091.01. (1) A person shall not operate as a grower, a dealer, or a collector without a valid license issued by the department. A person licensed as a grower shall not be required to obtain a separate dealer's license.

On or after December 31, 1993, a person shall not operate as a broker without a valid license issued by the department.

(2) Application for a license required by subsection (1) of this section shall be made to the director on forms furnished by the department.

Such application shall include the full name and mailing address of the applicant, the names and addresses of any partners, limited liability company 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 Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) Each applicant for a license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(4) Every licensee shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained.

(5) Each licensee shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received. A broker's records shall also include the names of the persons to which nursery stock was delivered, the delivery date, the amount delivered, and the variety and place of origin of the nursery stock delivered.

(6) A license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The license of a grower, dealer, or collector shall lapse automatically upon a change of location, and such licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A licensee shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a licensee permanently ceases operating, he or she shall return the license to the department.

Sec. 4. That section 2-1816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1816. Any person, ~~firm~~ corporation or association, for the purpose of obtaining information relative to the cost of potato inspection and grading services for a designated area, may request in writing that an estimate be prepared by the director of the costs of such a service. The director may consult with the Nebraska Potato Development Committee to establish an estimated inspection fee based upon the inspector's salary, mileage and other travel expenses, cost of inspection certificates, and other necessary expenses to cover the inspection service and the administration thereof.

To establish compulsory inspection of commercial shipments of potatoes in a designated area, a petition, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, with an estimate of inspection costs attached, may be presented to the director requesting that all commercial shipments of potatoes originating in the designated area be officially inspected and graded by the department at the point of origin or at locations approved by the director. The director shall fix a time and place for hearing on the petition and shall publish notice thereof in a newspaper having general circulation in the area designated in the petition for three consecutive weeks. At the time and place established by such notice, the director or his or her designate shall hold a public hearing upon the petition at which time evidence will be taken in support of or in opposition to the petition. If the evidence ~~shall~~ reveals that potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year are in favor of the compulsory program set forth in the petition request, the director shall enter an order establishing compulsory inspection of commercial shipments of potatoes in the area designated in the petition. A petition to terminate compulsory inspection, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, may be filed with the director at any time and such petition shall be set for public hearing in the manner aforesaid. If the director ~~shall find~~ finds from the evidence submitted at such hearing to terminate inspection services that the petition to terminate represents fifty-one percent or more of the

commercial potato acreage of the last preceding crop year, he or she shall enter an order declaring that compulsory potato inspection is terminated. In order to determine the commercial potato acreage of the last preceding crop year, the director shall use the tabulated crop acreage reports of the county assessors, compiled by the state-federal division of agricultural statistics.

Sec. 5. That section 2-1825, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1825. (1) Any person, firm, corporation, limited liability company, or association, or officer or member thereof, who shall (a) destroy or alter (a) destroys or alters any official certificate, (b) ship or attempt ships or attempts to ship any potatoes out of any designated area where compulsory inspection is maintained without first obtaining a special permit or without first complying with section 2-1816, or (c) violate violates any other provision of the Nebraska Potato Inspection Act or the rules and regulations promulgated thereunder for which no specific penalty is provided shall be guilty of a Class III misdemeanor.

(2) Any inspector or agent of the director who ~~shall fail~~ fails to remit to the department all fees collected in his or her official capacity shall be guilty of a Class III misdemeanor.

(3) Any person, firm, corporation, limited liability company, or association, or officer or member thereof, who shall forge or counterfeit forges or counterfeits any official inspection legend or official certificate adopted by the director for use under the Nebraska Potato Inspection Act or who, not being an inspector or appointed agent of the director, shall attach attaches any certificate of inspection whether or not forged or counterfeited to any commercial shipment of potatoes shall be guilty of a Class IV felony.

Sec. 6. That section 2-2406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2406. (1) It shall be unlawful for any private person, or persons, corporation, limited liability company, institution, or individual group to engage in activities for artificial weather modification except under and in accordance with a license issued by the department.

(2) Each such license shall expire on December 31 of each year and shall be revocable for cause at any time prior to such date by the department after notice and a hearing.

Sec. 7. That section 2-2624, Revised Statutes Supplement, 1993, be amended to read as follows:

2-2624. For purposes of the Pesticide Act:

(1) Active ingredient shall mean:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator shall mean the Administrator of the United States Environmental Protection Agency;

(3) Adulterated shall mean:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal shall mean a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote shall mean a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent shall mean any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk shall mean any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Certified applicator shall mean an individual who is licensed

under the act as authorized to use any pesticide which is classified for restricted use. Certified applicator shall include commercial applicator, noncommercial applicator, and private applicator;

(9) Commercial applicator shall mean a certified applicator, whether or not he or she is a private applicator with respect to some uses, who uses any pesticide which is classified for restricted use for any purpose or on any property other than as provided by subdivision (35) of this section. Commercial applicator shall also include those persons required to be licensed under subsection (2) of section 2-2638;

(10) Dealer shall mean any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(11) Defoliant shall mean a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(12) Department shall mean the Department of Agriculture;

(13) Desiccant shall mean a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(14) Device shall mean an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device shall not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(15) Director shall mean the Director of Agriculture or his or her designee;

(16) Distribute shall mean to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(17) Environment shall include water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(18) Federal act shall mean the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it;

(19) Federal agency shall mean the United States Environmental Protection Agency;

(20) Fungus shall mean any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, and bacteria, but shall not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(21) Inert ingredient shall mean an ingredient that is not an active ingredient;

(22) Ingredient statement shall mean a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(23) Insect shall mean any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect shall include allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(24) Label shall mean the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(25) Labeling shall mean all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(26) Land shall mean any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation;

(27) Misbranded shall mean that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator

pursuant to section 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under section 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or section 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode shall mean an invertebrate animal of the phylum Nemathelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator shall mean a certified applicator who applies restricted-use pesticides only on lands owned or controlled by his or her employer or for a governmental agency or subdivision of the state;

(30) Person shall mean any individual, partnership, limited

liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest shall mean:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide shall mean a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide shall include specialty pesticides. Pesticide shall not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(x), bearing or containing a new animal drug;

(33) Plant regulator shall mean a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but shall not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(34) Pollute shall mean to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(35) Private applicator shall mean a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(36) Restricted-use pesticide shall mean a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide receiving an exemption under section 136p of the federal act;

(37) Specialty pesticide shall mean (a) a disinfectant, sanitizer, germicide, or biocide or (b) a pesticide labeled solely for use directly on humans or pets or in, on, or around areas associated with the household or home life including lawn and garden and ornamental uses but shall not include turf as determined by the director;

(38) State management plan shall mean a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(39) State pesticide plan shall mean the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(40) State-limited-use pesticide shall mean any pesticide included on a list of state-limited-use pesticides by the department pursuant to the state management plan; and

(41) Weed shall mean any plant that grows where not wanted.

Sec. 8. That section 2-2635, Revised Statutes Supplement, 1993, be amended to read as follows:

2-2635. (1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using

restricted-use pesticides only for its own program;

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides; or

(d) Persons who sell only general-use specialty pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to a certified applicator, a licensed pesticide dealer, or, under rules and regulations adopted by the department, a person who is not a certified applicator for application by a certified applicator.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department within thirty days after January 1, 1994, or prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of fifty dollars. The fee may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. In no event shall the fee exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm or partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

Sec. 9. That section 2-5002, Revised Statutes Supplement, 1993, be amended to read as follows:

2-5002. For purposes of sections 2-5002 to 2-5005:

(1) Aquaculture shall have the definition found in section 2-3804.01;

(2) Aquaculture facility shall mean any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes;

(3) Aquaculturist shall mean any individual, partnership, limited liability company, or corporation, other than an employee of a state or

federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof;

(4) Aquatic disease shall mean any departure from a normal state of health of aquatic organisms caused by disease agents;

(5) Aquatic organism shall mean an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, aquatic insect, or other aquatic invertebrate. Aquatic organism shall include the viable gametes, eggs or sperm, of an aquatic organism;

(6) Board shall mean the Nebraska Aquaculture Board;

(7) Commercial aquaculturist shall mean an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes;

(8) Commission shall mean the Game and Parks Commission;

(9) Cultured aquatic stock shall mean aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms;

(10) Department shall mean the Department of Agriculture; and

(11) Director shall mean the Director of Agriculture.

Sec. 10. That section 8-1101, Revised Statutes Supplement, 1993, be amended to read as follows:

8-1101. For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Director shall mean the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(2) Agent shall mean any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent shall not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subdivision (8), (9), or (10) of section 8-1110, (b) effecting certain transactions exempted by section 8-1111, or (c) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, limited liability company member, officer, or director of a broker-dealer shall be an agent only if he or she otherwise comes within this definition;

(3) Broker-dealer shall mean any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer shall not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (3)(b) of this section;

(4) Guaranteed shall mean guaranteed as to payment of principal, interest, or dividends;

(5) Investment adviser shall mean any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser shall also include financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if his or her only clients in this



state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or during any period of twelve consecutive months he or she does not direct business communications into this state in any manner to more than five clients other than those specified in this subdivision (g), or (h) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(6) Investment adviser representative shall mean any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(7) Issuer shall mean any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer shall mean the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(8) Issuer-dealer shall mean (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(9) Nonissuer shall mean not directly or indirectly for the benefit of the issuer;

(10) Person shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(11) Sale or sell shall include every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(12) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940, and Investment Company Act of 1940 shall mean the federal statutes of those names as amended on or before January 1, 1993;

(13) Security shall mean any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security shall not include any insurance or endowment policy or annuity contract issued by an insurance company; and

(14) State shall mean any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico.

Sec. 11. That section 8-1102, Revised Statutes Supplement, 1993, be amended to read as follows:

8-1102. (1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud any person;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule, regulation, or order; or

(e) In the solicitation of advisory clients, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule, regulation, or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract:

(a) Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of any client;

(b) Unless the investment advisory contract prohibits in writing the assignment of the contract by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership or a limited liability company, the other party to the contract shall be notified of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

(4) Subdivision (3)(a) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that if the investment adviser is a partnership or a limited liability company, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule, regulation, or order prohibits the taking or custody; or

(b) In the absence of any rule, regulation, or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule, regulation, or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and (3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

Sec. 12. That section 8-1103, Revised Statutes Supplement, 1993, be amended to read as follows:

8-1103. (1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless (a) he or she is registered under the act, (b) he or she is registered as a broker-dealer under the act, or (c) he or she is registered as an agent of a broker-dealer under the act and his or her investment advisory services are conducted under the supervision of and any and all compensation received for the investment advisory services is channeled through the broker-dealer. It shall be unlawful for any investment adviser required to be registered under the act to employ an investment adviser representative unless the investment adviser representative is registered under the act. The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

- (a) The applicant's form and place of organization;
- (b) The applicant's proposed method of doing business;
- (c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;
- (d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (e) The applicant's financial condition and history; and
- (f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(1) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the Department of Banking and Finance. Such examination shall be administered upon request and upon payment of an

examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director; and

(iii) That a broker-dealer, investment adviser, or issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require a broker-dealer, investment adviser, or issuer-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118. In addition, the director may establish other minimum financial requirements for investment advisers, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities than may be required for investment advisers who do not maintain custody of or authority over clients' funds or securities.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer and agent shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer, investment adviser, or investment adviser representative shall be effective for a period of not more than one year and may be renewed as provided in this section.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the act.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative filed with the director by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, issuer-dealer, or investment adviser, a financial statement showing the financial condition of such broker-dealer, issuer-dealer, or investment adviser as of a date within ninety days.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. When an application is denied or withdrawn, the director shall retain all of the fee.

(7) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts and other records as the director prescribes. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. Costs of such reasonable examinations shall be borne by the registrant.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar or censure any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner,

limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska; or

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in the securities or commodities industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit.

(b) The director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him or her when registration became effective. The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain

in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(c) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(d) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Sec. 13. That section 8-1109, Revised Statutes Supplement, 1993, be amended to read as follows:

8-1109. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by notification or coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule, order, or condition lawfully imposed under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by notification, it is not eligible for such registration;

(5) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(6) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(7) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(8) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(9) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(10) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Sec. 14. That section 8-1118, Revised Statutes Supplement, 1993, be amended to read as follows:

8-1118. (1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of the act or any rule or order under the act shall be void.

Sec. 15. That section 8-1717.01, Revised Statutes Supplement, 1993, be amended to read as follows:

8-1717.01. It shall be a defense in any complaint, information, indictment, writ, or proceeding brought under the Commodity Code alleging a violation of section 8-1717 based solely on the failure in an individual case to make physical delivery within the applicable time period under subdivisions

(1)(b) and (e) of section 8-1719 if (1) the failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, limited liability company members, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller or any of them, or the seller's affiliates, subsidiaries, or successors and (2) physical delivery was completed within a reasonable time under the applicable circumstances.

Sec. 16. That section 9-1,104, Revised Statutes Supplement, 1993, be amended to read as follows:

9-1,104. (1) Any person applying for or holding a contract or license (a) as a distributor, gaming manager, or manufacturer pursuant to the Nebraska Bingo Act, (b) as a distributor, manufacturer, pickle card operator, or sales agent pursuant to the Nebraska Pickle Card Lottery Act, (c) as a lottery operator, manufacturer-distributor, or sales outlet location pursuant to the Nebraska County and City Lottery Act, or (d) pursuant to the State Lottery Act shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol for the purpose of determining whether the Department of Revenue has a basis to deny the contract or license application or to suspend, cancel, revoke, or terminate the person's contract or license. Each applicant for or party holding a license as a manufacturer, distributor, manufacturer-distributor, or lottery operator shall also submit a personal history report to the department on a form provided by the department and may be subject to a background investigation, an inspection of the applicant's or licensee's facilities, or both.

(2)(a) If the applicant, party to the contract, or licensee is a corporation or organization, the persons subject to such requirements shall include any officer or director of the corporation or organization, his or her spouse, any person or entity directly or indirectly associated with such corporation or organization in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held, and, if applicable, any person or entity holding in the aggregate ten percent or more of the debt or equity of the corporation or organization. If any person or entity holding ten percent or more of the debt or equity of the applicant, contractor, or licensee corporation is a corporation, partnership, or limited liability company, every partner of such partnership, every member of such limited liability company, every officer or director of such corporation or partnership, every person or entity holding ten percent or more of the debt or equity of such corporation, or partnership, or limited liability company, and every person or entity directly or indirectly associated with such corporation, or partnership, or limited liability company in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held, or member of a limited liability company may also be subject to such requirements. If the applicant, party to the contract, or licensee is a partnership, the persons subject to such requirements shall include any partner, his or her spouse, any officer or director of the partnership, or any person or entity directly or indirectly associated with such partnership in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held. If the applicant, party to the contract, or licensee is a limited liability company, the persons subject to such requirement shall include any member and his or her spouse.

(b) Notwithstanding the provisions of this section, background investigations shall not be required of any debt holder which is a financial institution authorized to conduct business in the State of Nebraska by the Department of Banking and Finance.

(3) A person applying for or holding a license as a pickle card operator, lottery operator, or sales outlet location shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol only if such an investigation has not been performed by the Nebraska Liquor Control Commission.

(4)(a) The applicant, party to the contract, or licensee shall pay the actual cost of any fingerprinting or check of his or her criminal history record information.

(b) The Department of Revenue may require an applicant or licensee subjected to a background investigation, a facilities inspection, or both to



pay the actual costs incurred by the department in conducting the investigation or inspection. The department may require payment of the estimated costs in advance of beginning the investigation or inspection. If an applicant does not wish to pay the estimated costs, it may withdraw its application and its application fee will be refunded. After completion of the investigation or inspection, the department shall refund any overpayment or shall charge and collect an amount sufficient to reimburse the department for any underpayment of actual costs. The department may establish by rule and regulation the conditions and procedures for payment of the costs.

(5) Refusal to comply with this section by any person licensed or seeking a license under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act shall be a violation of the act under which such person is licensed or is seeking licensure.

Sec. 17. That section 9-620, Revised Statutes Supplement, 1993, be amended to read as follows:

9-620. The department shall have the following powers, functions, and duties:

(1) To issue licenses;

(2) To deny any license application or renewal application for cause. Cause for denial of an application or renewal of a license shall include instances in which the applicant individually, or in the case of a business entity, any officer, director, or employee, or limited liability company member of the applicant or licensee other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant or licensee which directly or indirectly receives compensation, other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 400 of the Internal Revenue Code of 1986, as amended, from such applicant or licensee for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant or licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the Nebraska County and City Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska County and City Lottery Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity; or

(l) Failed to demonstrate, either individually or in the case of a business entity through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to establish or maintain the

activity for which the application is made.

No license renewal shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license. Cause for revocation, cancellation, or suspension of a license shall include instances in which the licensee individually, or in the case of a business entity, any officer, director, or employee, or limited liability company member of the licensee other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee which directly or indirectly receives compensation, other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 400 of the Internal Revenue Code of 1986, as amended, from such licensee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska County and City Lottery Act or any rules or regulations adopted and promulgated pursuant to the act;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license pursuant to the act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the act;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity; or

(k) Failed to demonstrate, either individually or in the case of a business entity through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued;

(4) To issue and cause to be served upon any licensee an order requiring the licensee to cease and desist from violations of the Nebraska County and City Lottery Act. The order shall give reasonable notice of the rights of the licensee to request a hearing and shall state the reason for the entry of the order. A hearing shall be held not later than seven days after the request for the hearing is received by the Tax Commissioner, and within twenty days of the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee shall be deemed in default and the proceeding may be determined against the licensee upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the

violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act and regulations. A fine levied on a violator under this section shall not exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act. If an administrative fine is levied, the fine shall not be paid from lottery gross proceeds of the county, city, or village and shall be remitted by the violator to the department within thirty days from the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where lottery activity required to be licensed under the act is being conducted to determine whether any of the provisions of the act or any rules or regulations adopted and promulgated under it have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of lottery activity from licensed counties, cities, villages, manufacturer-distributors, and lottery operators and any other persons, organizations, limited liability companies, or corporations as the department deems necessary to carry out the act;

(8) To audit, examine, or cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of a lottery, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(9) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid as taxes pursuant to section 9-648 in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(10) To confiscate and seize lottery equipment or supplies pursuant to section 9-649;

(11) To investigate the activities of any person applying for a license under the Nebraska County and City Lottery Act or relating to the conduct of any lottery activity under the act. Any license applicant or licensee shall produce such information, documentation, and assurances as may be required by the department to establish by a preponderance of the evidence the financial stability, integrity, and responsibility of the applicant or licensee, including, but not limited to, bank account references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, business entity and personal accounting records, and check records and ledgers. Any such license applicant or licensee shall authorize the department to examine bank accounts and other such records as may be deemed necessary by the department;

(12) To adopt and promulgate such rules and regulations and prescribe all forms as are necessary to carry out the act; and

(13) To employ staff, including auditors and inspectors, as necessary to carry out the act.

Sec. 18. That section 9-642, Revised Statutes Supplement, 1993, be amended to read as follows:

9-642. (1) No sole proprietor, partner in a partnership, member in a limited liability company, officer or director of a corporation, or individual with a substantial interest in a sole proprietorship, partnership, limited liability company, or corporation applying for a lottery operator license or licensed as a lottery operator shall be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor, manufacturer, or manufacturer-distributor under section 9-233.01, 9-235, 9-330, 9-332, or 9-632.

(2) No member of the governing board or governing official of a county, city, or village shall be connected with or interested in, directly or indirectly, any lottery operator with whom the county, city, or village contracts to conduct its lottery or any manufacturer-distributor.

Sec. 19. That section 9-826, Revised Statutes Supplement, 1993, be amended to read as follows:

9-826. A contract may be awarded to an applicant to operate as a lottery game retailer only after the director finds all of the following:

(1) The applicant is at least nineteen years of age;  
 (2) The applicant has not been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or theft and the applicant has not been convicted of any other felony within ten years preceding the date such applicant applies for a contract;

(3) The applicant has not been convicted of a violation of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Chapter 28, article 11;

(4) The applicant has not previously had a license revoked or denied under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Chapter 28, article 11;

(5) The applicant has not had a license or contract to sell tickets for a lottery in another jurisdiction revoked by the authority regulating such lottery or by a court of such jurisdiction;

(6) The applicant has demonstrated financial responsibility, as determined in rules and regulations of the division, sufficient to meet the requirements of a lottery game retailer;

(7) The applicant is the true owner of the business or activity and the outlet at which tickets will be sold and all persons holding at least a ten percent ownership interest in the applicant's business or activity have been disclosed;

(8) The applicant has been in substantial compliance with Nebraska tax laws as determined by the director based on the severity of any possible violation for the five years prior to applying, is not delinquent in the payment of any Nebraska taxes at the time of application, and is in compliance with Nebraska tax laws at the time of application; and

(9) The applicant has not knowingly made a false statement of material fact to the director.

For purposes of this section, applicant shall include the entity seeking the contract and every sole proprietor, partner in a partnership, member in a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock of a corporation, and governing officer of an organization or political subdivision.

Sec. 20. That section 9-834, Revised Statutes Supplement, 1993, be amended to read as follows:

9-834. (1) To enable the division to review and evaluate the competence, integrity, background, character, and nature of the ownership and control of lottery vendors for major procurements, such vendors shall disclose the following information:

(a) The lottery vendor's name, address, and type of business entity and, as applicable, the name and address of the following:

(i) If the lottery vendor is a corporation, the officers, directors, and each stockholder in the corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in five percent or more of such securities need to be disclosed;

(ii) If the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) If the lottery vendor is an association, the members, officers, and directors;

(iv) If the lottery vendor is a subsidiary, the officers, directors, and each stockholder of the parent corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in five percent or more of such securities need to be disclosed;

(v) If the lottery vendor is a limited liability company, the members and any managers;

(vi) If the lottery vendor is a partnership or joint venture, the general partners, limited partners, or joint venturers;

(vii) If the parent company, general partner, limited partner, or joint venturer of the lottery vendor is itself a corporation, trust, association, subsidiary, partnership, limited liability company, or joint

venture, all the information required in subdivision (a) of this subsection shall be disclosed for such other entity as if it were itself a lottery vendor so that full disclosure of ultimate ownership is achieved;

(viii) If any parent, child, brother, sister, or spouse of the lottery vendor is involved in the vendor's business in any capacity, all of the information required in subdivision (a) of this subsection shall be disclosed for such family member as if he or she was a lottery vendor; and

(ix) If the lottery vendor subcontracts any substantial portion of the work to be performed to a subcontractor, all of the information required in subdivision (a) of this subsection shall be disclosed for each subcontractor as if it were itself a lottery vendor;

(b) The place of the lottery vendor's incorporation, if any;

(c) The states in which the lottery vendor is qualified to do business and the nature of any business done in each state;

(d) The name, address, and telephone number of a resident agent to contact regarding matters of the lottery vendor and for service of process;

(e) The name, address, and telephone number of each attorney and law firm representing the lottery vendor in this state;

(f) The name, address, and telephone number of each of the lottery vendor's accountants;

(g) The name, address, and telephone number of each attorney, law firm, accountant, accounting firm, public relations firm, consultant, sales agent, or other person engaged by the lottery vendor or involved in aiding the vendor's efforts to obtain the contract and the procurement involved at the time of disclosure or during the prior year;

(h) The states and jurisdictions in which the lottery vendor does business and the nature of the business for each such state or jurisdiction;

(i) The states and jurisdictions in which the lottery vendor has contracts to supply goods or services related to lottery games and the nature of the goods or services involved for each such state or jurisdiction;

(j) The states and jurisdictions in which the lottery vendor has applied for, sought renewal of, received, been denied, or had revoked a gaming contract or license of any kind, and the status of such application, contract, or license in each state or jurisdiction. If any gaming contract or license has been revoked or has not been renewed or if any gaming contract or license application either has been denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive or retain such a contract or license shall be disclosed. For purposes of this subdivision, gaming contract or license shall mean a contract or license for the conduct of or any activity related to the operation of any lottery game or other gambling scheme;

(k) The details of any conviction or judgment of any state or federal court against the lottery vendor relating to any felony and any other criminal offense other than a traffic violation;

(l) The details of any bankruptcy, insolvency, reorganization, or pending litigation involving the lottery vendor;

(m) The identity of any entity with which the lottery vendor has a joint venture or other contractual agreement to supply any state or jurisdiction with goods or services related to lottery games, including, with regard to such entity, all the information requested under subdivisions (a) through (l) of this subsection;

(n) The lottery vendor's financial statements for the three years prior to disclosure;

(o) At the director's request, the lottery vendor's federal and state income tax returns for the three years prior to disclosure. Such information shall be considered confidential in any review in conjunction with any pending major procurement and shall not be disclosed except pursuant to appropriate judicial order;

(p) The identity and nature of any interest known to the lottery vendor of any past or present director or other employee of the division who, directly or indirectly, is an officer, director, limited liability company member, agent, consultant, independent contractor, stockholder, debt holder, principal, or employee of or who has any direct or indirect financial interest in any lottery vendor. For purposes of this subdivision, financial interest shall mean ownership of any interest or involvement in any relationship from which or as a result of which a person within the five years prior to disclosure has received, is receiving at the time of disclosure, or in the future will be entitled to receive over a five-year period more than one thousand dollars or its equivalent; and

(q) Such additional disclosures and information as the Tax Commissioner may determine to be appropriate for the major procurement involved.

(2) The disclosures required by subsection (1) of this section may be required only once of a lottery vendor. The vendor shall file an addendum to the original filing by August 1 of each year showing any changes from the original filing or the latest addendum.

(3) No contract shall be approved by the Tax Commissioner or signed or entered into by the director unless the lottery vendor has complied with this section. Any contract entered into with a vendor who has not complied with this section shall be void.

(4) If a contract is to be entered into as a result of competitive procurement procedures, the required disclosures, if not already on file with the director, shall be made prior to or concurrent with the submission of a bid, proposal, or offer. If the contract is entered into without a competitive procurement procedure, such disclosures shall be required prior to execution of the contract.

(5) No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or theft. No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of any other felony within ten years preceding the date of submission of information required under this section. For purposes of this subsection, person with a substantial interest shall mean any sole proprietor, partner in a partnership, member or manager of a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock in a corporation, or governing officer of an organization or other entity.

(6) This section shall be construed broadly and liberally to achieve the end of full disclosure of all information necessary to allow for a full and complete evaluation by the director of the competence, integrity, background, character, and nature of the ownership and control of lottery vendors for major procurements.

Sec. 21. That section 21-2070, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2070. Any two or more domestic corporations, ~~or~~ subject to the Nebraska Uniform Limited Partnership Act, domestic limited partnerships, ~~or~~ domestic limited liability companies or any combination of such entities may merge into one of such corporations, ~~or~~ one of such limited partnerships, ~~or~~ one of such limited liability companies pursuant to a plan of merger approved in the manner provided in the Nebraska Business Corporation Act. Mergers shall be subject to the Nebraska Uniform Limited Partnership Act or the Limited Liability Company Act when a limited partnership or limited liability company is involved.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations, ~~or~~ limited partnerships, ~~or~~ limited liability companies proposing to merge and the name of the corporation, ~~or~~ limited partnership, ~~or~~ limited liability company into which they propose to merge, which is hereinafter designated as the surviving corporation, ~~or~~ surviving limited partnership, ~~or~~ surviving limited liability company;

(2) The terms and conditions of the proposed merger;

(3) The manner and basis of converting the equity securities of each corporation, ~~or~~ limited partnership, ~~or~~ limited liability company into securities of the surviving corporation, ~~or~~ surviving limited partnership, ~~or~~ surviving limited liability company or of any other corporation, ~~or~~ limited partnership, ~~or~~ limited liability company or, in whole or in part, into cash or other property and, if any equity securities of each merging corporation, ~~or~~ limited partnership, ~~or~~ limited liability company are not to be converted solely into securities of the surviving entity, the cash, property, or securities of any other corporation, ~~or~~ limited partnership, ~~or~~ limited liability company which the holders of such equity securities are to receive in exchange for, or upon conversion of, such equity securities and the surrender of the certificates evidencing them, which cash, property, or securities of any other corporation, ~~or~~ limited partnership, ~~or~~ limited liability company may be in addition to or in lieu of securities of the surviving corporation, ~~or~~ surviving limited partnership, ~~or~~ surviving limited liability company;

(4) A statement of any changes in the articles of incorporation, ~~or~~ certificate of limited partnership, ~~or~~ articles of organization of the surviving corporation, ~~or~~ surviving limited partnership, ~~or~~ surviving limited liability company to be effected by such merger; and

(5) Such other provisions with respect to the proposed merger as are

deemed necessary or desirable.

Sec. 22. That section 21-2071, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2071. Any two or more domestic corporations, or, subject to the Nebraska Uniform Limited Partnership Act, domestic limited partnerships, or domestic limited liability companies or any combination of such entities may consolidate into a new entity pursuant to a plan of consolidation approved in the manner provided in the Nebraska Business Corporation Act. Consolidations shall be subject to the Nebraska Uniform Limited Partnership Act or the Limited Liability Company Act when a limited partnership or limited liability company is involved.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations, ~~or~~ limited partnerships, ~~or~~ limited liability companies proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) The terms and conditions of the proposed consolidation;

(3) The manner and basis of converting the equity securities of each corporation, ~~or~~ limited partnership, ~~or~~ limited liability company into securities of the new corporation or of any other corporation, ~~or~~ limited partnership ~~or~~ limited liability company or, in whole or in part, into cash or other property and, if any equity securities of each corporation, ~~or~~ limited partnership, ~~or~~ limited liability company are not to be converted solely into securities of the new corporation, the cash, property, or securities of any other corporation, ~~or~~ limited partnership, ~~or~~ limited liability company which the holders of such equity securities are to receive in exchange for, or upon conversion of, such equity securities and the surrender of the certificates evidencing them, which cash, property, or securities of any other corporation, ~~or~~ limited partnership, ~~or~~ limited liability company may be in addition to or in lieu of securities of the new corporation;

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under the act; and

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Sec. 23. That section 21-2075, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2075. A merger, consolidation, or exchange shall become effective upon filing and recording in the office of the Secretary of State of the original of the articles of merger, consolidation, or exchange or on such later date, not more than thirty days subsequent to the filing thereof with the Secretary of State, as shall be provided for in the plan.

When such merger or consolidation has become effective, section 67-248.02 shall apply if the surviving or new entity is a limited partnership, section 50 of this act shall apply if the surviving or new entity is a limited liability company, and if the surviving or new entity is a corporation:

(1) The several corporations, ~~or~~ limited partnerships, ~~or~~ limited liability companies which are parties to the plan of merger or consolidation shall be a single corporation, which in the case of a merger shall be that corporation designated in the plan of merger as the surviving corporation and in the case of a consolidation shall be the new corporation provided for in the plan of consolidation;

(2) The separate existence of all corporations, ~~or~~ limited partnerships, ~~or~~ limited liability companies which are parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all duties and liabilities of a corporation organized under the Nebraska Business Corporation Act;

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations and, subject to the Nebraska Uniform Limited Partnership Act, of each of the merging or consolidating limited partnerships and, subject to the Limited Liability Company Act, of each of the merging or consolidating limited liability companies. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of action, and all and every other interest of or belonging to or due to each of the corporations, ~~and~~ limited partnerships, ~~or~~ limited liability companies so merged or consolidated shall be taken and deemed to be transferred to and vested in such corporation

without further act or deed and shall thereafter be the property of the surviving or new corporation to the same extent as they were of each of such merging or consolidating entities. The title to any real estate, or any interest therein, vested in any of such corporations, or limited partnerships, or limited liability companies shall not revert or be in any way impaired by reason of such merger or consolidation;

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations, or limited partnerships, or limited liability companies so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations, or limited partnerships, or limited liability companies may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations, or limited partnerships, or limited liability companies shall be impaired by such merger or consolidation;

(6) In the case of a merger, other than a merger under the provisions of section 21-2074, the surviving entity's articles of incorporation, or certificate of limited partnership, or articles of organization shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation, or certificate of limited partnership, or articles of organization are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under the Nebraska Business Corporation Act, or in the certificate of limited partnership of a limited partnership organized under the Nebraska Uniform Limited Partnership Act, or in the articles of organization of a limited liability company organized under the Limited Liability Company Act shall be deemed to be the original articles of incorporation, or certificate of limited partnership, or articles of organization of the new entity; and

(7) The net surplus of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that such surplus is not transferred to stated capital or capital surplus by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

When a merger, consolidation, or exchange has become effective, the equity securities of the corporation or corporations, and limited partnership or limited partnerships, and limited liability company or limited liability companies party to the plan that are, under the terms of the plan, to be converted or exchanged, shall cease to exist, in the case of a merger or consolidation, or be deemed to be exchanged in the case of an exchange, and the holders of such equity securities shall thereafter be entitled only to the cash, property, or securities into which they shall have been converted or for which they shall have been exchanged, in accordance with the plan, subject to any rights under section 21-2079.

Sec. 24. That section 21-2076, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2076. One or more foreign corporations, one or more domestic corporations, one or more domestic limited partnerships, and one or more foreign limited partnerships, one or more domestic limited liability companies, and one or more foreign limited liability companies or any combination of such entities may be merged or consolidated, or participate in an exchange, in the following manner, if such merger, consolidation, or exchange is permitted by the laws of the state under which each such foreign corporation, or foreign limited partnership, or foreign limited liability company is organized:

(1) Each domestic corporation, or domestic limited partnership, or domestic limited liability company shall comply with the Nebraska Business Corporation Act, and the Nebraska Uniform Limited Partnership Act, and the Limited Liability Company Act with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations, and domestic limited partnerships, and domestic limited liability companies, and each foreign corporation, or foreign limited partnership, or foreign limited liability company shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) If the surviving or new entity in the merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the Nebraska Business Corporation Act with respect to foreign corporations, or the Nebraska Uniform Limited Partnership Act with respect to foreign limited partnerships, or the Limited Liability Company Act with



respect to foreign limited liability companies if it is to transact business in this state, and in every case it shall file with the Secretary of State of this state:

(a) An agreement that it may be served with process within or without this state in any proceeding in the courts of this state for the enforcement of any obligation of any domestic corporation, or domestic limited partnership, or domestic limited liability company which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new entity; and

(b) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they will be entitled under the Nebraska Business Corporation Act with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, or domestic limited partnerships, or domestic limited liability companies if the surviving or new entity is to be governed by the laws of this state. If the surviving or new entity is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, or domestic limited partnerships, or domestic limited liability companies except insofar as the laws of such other state provide otherwise.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Sec. 25. That section 21-2601, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2601. Sections 21-2601 to 21-2645 and sections 40 to 42 and 45 to 52 of this act shall be known and may be cited as the Limited Liability Company Act.

Sec. 26. That section 21-2602, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2602. (1) A limited liability company may be organized pursuant to the Limited Liability Company Act for any lawful purpose other than banking or insurance.

(2) A limited liability company organized pursuant to the act shall be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska, except that a limited liability company in which the members are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch, and none of whom are nonresident aliens, shall not be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska.

Sec. 27. That section 21-2605, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2605. Two or more persons may form a limited liability company by signing; verifying; executing and delivering articles of organization in duplicate to the Secretary of State. If the number of members of a limited liability company is reduced to less than two through the death, retirement, resignation, expulsion, bankruptcy, or dissolution of one or more members, the limited liability company may, through the remaining member, within ninety days of such event, admit one or more new members who shall have authority under section 21-2622 to consent to the continuation of the business of the limited liability company.

Sec. 28. That section 21-2606, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2606. (1) The articles of organization of a limited liability company shall set forth:

- (a) The name of the limited liability company;
- (b) The period of its duration, which may not exceed thirty years from the date of filing with the Secretary of State;
- (c) The purpose for which the limited liability company is organized;

(d) The address of its principal place of business in this state and the name and address of its registered agent in this state;

(e) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(f) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the

contributions will be made;

(g) The right, if given, of the members to admit additional members and the terms and conditions of the admission;

(h) The right, if given, of the remaining members of the limited liability company to continue the business on the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or on the occurrence of any other event which terminates the continued membership of a member in the limited liability company;

(i) If the limited liability company is to be managed by a manager, the name and address of the manager who is to serve as manager until the first annual meeting of members or until his or her managers, the names and addresses of the managers who will serve as managers until the successor is elected, and qualified; and if the management of a limited liability company is reserved to the members, the names and addresses of the members; and

(j) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(2) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

Sec. 29. That section 21-2610, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2610. (1) A limited liability company may change its registered office or registered agent upon filing with the Secretary of State a statement setting forth:

(a) The name of the limited liability company;  
 (b) The address of its current registered office;  
 (c) If the address of its registered office is to be changed, the new address;

(d) The name of its current registered agent;  
 (e) If its registered agent is to be changed, the name of the successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company.

(2) The statement shall be verified executed and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

Sec. 30. That section 21-2611, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2611. If a limited liability company has failed for thirty ninety days to appoint and maintain a registered agent in this state, has failed for thirty ninety days after change of its registered office or registered agent to file with the Secretary of State a statement of the change, or has failed to pay any fee or tax required by section 21-2634, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights, or privileges acquired under the laws of this state. The Secretary of State shall mail a notice of failure to comply to the limited liability company at its registered office by certified mail. Unless the limited liability company comes into compliance within thirty days after the delivery of notice, the limited liability company shall be deemed to be defunct and to have forfeited its certificate of organization. A defunct limited liability company may at any time within one year after the forfeiture of its certificate be revived and reinstated by filing any necessary documents, paying any fees, or taxes, and paying an additional fee of one hundred dollars. A revived and reinstated limited liability company shall have the same force and effect as if its existence had not been defunct.

Sec. 31. That section 21-2612, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2612. (1) The members and managers of a limited liability company shall not be liable under a judgment, decree, or order of a court or in any other manner for a debt, obligation, or liability of the limited liability company. Except as otherwise specifically set forth in the Limited Liability Company Act, no member, manager, employee, or agent of a limited liability company shall be personally liable under any judgment, decree, or order of any court, agency, or other tribunal in this or any other state, or on any other basis, for any debt, obligation, or liability of the limited liability company.

(2) The members of a limited liability company shall be liable for unpaid taxes imposed upon a limited liability company when management is reserved to the members. If management is not reserved to the members, the managers of a limited liability company shall be liable for taxes in the same manner as a corporate officer is liable for taxes.

Sec. 32. That section 21-2614, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2614. Contributions to capital by a member of a limited liability company may consist of any tangible or intangible property or benefit to the company. For purposes of the Limited Liability Company Act, stated capital shall mean the sum of initial capital contributed to a limited liability company which serves as a minimum basis for capitalization.

Sec. 33. That section 21-2615, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2615. Unless the articles of organization provide to the contrary, management of a limited liability company shall be vested in each member in proportion to his or her contribution to the capital of the limited liability company as adjusted from time to time to properly reflect any additional contribution or withdrawal by another member. If the articles of organization provide for the management of the limited liability company by managers, the managers a manager, the manager shall be elected annually by the members in a manner provided in the operating agreement. The manager managers shall also hold the offices and have the responsibilities accorded to him or her them by the members and as set out in the operating agreement.

Sec. 34. That section 21-2619, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2619. (1) A member shall not receive out of limited liability company property any part of his or her contributions to capital until:

(a) All liabilities of the limited liability company other than liabilities to members on account of their contributions to capital have been paid or there remains property of the limited liability company sufficient to pay them;

(b) At least two-thirds of the members The members constituting at least a two-thirds majority in interest or such greater number interest as specified in the articles of organization have consented unless the return of the contributions to capital may be rightfully demanded pursuant to law; or

(c) The articles of organization are canceled or amended to set out the withdrawal or reduction.

(2) Subject to subsection (1) of this section, a member may demand the return of his or her contributions to capital:

(a) On the dissolution of the limited liability company; or  
(b) After the member has given all other members of the limited liability company six months' prior notice in writing if no other time limit is specified in the articles of organization for the dissolution of the limited liability company.

(3) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of his or her contributions to capital, shall have only the right to demand and receive cash in return for his or her contributions to capital.

(4) A member of a limited liability company may have the limited liability company dissolved and its affairs wound up when:

(a) The member rightfully but unsuccessfully has demanded the return of his or her contributions to capital; or

(b) The other liabilities of the limited liability company have not been paid or the limited liability company property is insufficient for their payment and the member would otherwise be entitled to the return of his or her contributions to capital.

Sec. 35. That section 21-2620, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2620. (1) A member shall be liable to the limited liability company:

(a) For the difference between his or her contributions to stated

capital as actually made and as stated in the articles of organization as having been made; and

(b) For any unpaid contribution to stated capital which he or she agreed in the articles of organization to make in the future at the time and on the conditions stated in the articles of organization.

(2) A member holds as trustee for the limited liability company:

(a) Specific property stated in the articles of organization as contributed by such member but which was not contributed or which has been wrongfully or erroneously returned; and

(b) Money or other property wrongfully paid or conveyed to such member on account of his or her contributions to capital.

(3) The liabilities of a member as set out in this section may be waived or compromised only by the consent of all members. A waiver or compromise shall not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization to enforce the liabilities.

(4) When a contributor has rightfully received the return in whole or in part of his or her contributions to capital, the contributor shall be liable to the limited liability company for any sum, not in excess of the amount returned with interest, necessary to discharge the liability to all creditors of the limited liability company who extended credit or whose claims arose before the return for a period of three years from the date of distributions.

Sec. 36. That section 21-2621, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2621. The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in the operating agreement. If all of the other a two-thirds majority in interest of the members of the limited liability company other than the member proposing to dispose of his or her interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member. The transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions to capital to which that member would otherwise be entitled. Additional members shall be admitted upon an affirmative vote of a majority in interest of the current members of the limited liability company.

Sec. 37. That section 21-2622, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2622. A limited liability company shall be dissolved upon the occurrence of the following:

(1) The expiration of the period fixed for the duration of the limited liability company;

(2) The unanimous written agreement of all members; or

(3) The death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company unless the business of the limited liability company is continued by the consent of at least two-thirds of the remaining members constituting at least a two-thirds majority in interest or such greater interest as otherwise provided in writing, in the articles of organization, or in the operating agreement.

Sec. 38. That section 21-2628, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2628. (1) The articles of organization of a limited liability company shall be amended when:

(a) There is a change in the name of the limited liability company;

(b) There is a change in the purpose for which the limited liability company is organized;

(c) There is a false or erroneous statement in the articles of organization change in stated capital that reduces the stated capital below the amount in the articles of organization;

(d) There is a change in the time as stated in the articles of organization for the dissolution of the limited liability company;

(e) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or

(f) The members desire to make a change in any other statement in the articles of organization so the articles will accurately represent the agreement between the members.

(2) The form for evidencing an amendment to the articles of

organization of a limited liability company shall be prescribed by the Secretary of State and shall contain such terms and provisions as determined by the Secretary of State. The amendment shall be signed and sworn to by all members, and an amendment adding a new member shall also be signed by the member to be added executed by a two-thirds majority in interest of the members. Duplicate originals of the amendment shall be forwarded to the Secretary of State for filing with the filing fee.

Sec. 39. That section 21-2631, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2631. Each member, manager, employee, or agent of a limited liability company organized under the Limited Liability Company Act who renders professional services shall hold a valid license or otherwise be duly authorized to render those professional services under the law of this state if he or she renders professional services within this state or under the law of the state, territory, or other jurisdiction in which he or she renders those professional services. Before rendering professional services, the limited liability company shall (1) file with the Secretary of State a registration certificate issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member as of the last day of the month preceding the filing, and (2) certify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise authorized to perform the professional services for which the limited liability company is organized.

Sec. 40. An application for issuance of a registration certificate shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, and professional employees of the limited liability company, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, and professional employee of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession of the applicant and that each member, manager, or professional employee required by law to be licensed is not otherwise disqualified from performing the professional services of the applicant, such regulatory body shall certify in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body that the proposed or existing limited liability company complies with the provisions of the Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such registration certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

One copy of such certificate shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and one copy shall be filed with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be filed in the office of the Secretary of State with the articles of organization. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

Sec. 41. Each registration certificate issued to a limited liability company pursuant to section 40 of this act shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply to its regulatory body for a registration certificate in the manner provided in such section. A certificate shall be filed annually with the Secretary of State within thirty days before the expiration date of the last certificate on file in the office of the Secretary of State or the limited liability company shall be suspended. Registration certificates shall not be transferable or assignable.

Sec. 42. A regulatory body may, upon a form prescribed by it, suspend or revoke any registration certificate issued to any limited liability company pursuant to section 40 of this act upon the suspension or revocation of the license or other authorization to perform professional service of any member, manager, or professional employee of a holder of a certificate. Notice of such revocation shall be provided the limited liability company affected by sending by certified or registered mail a certified copy of such revocation to the limited liability company at its principal place of business set forth in the registration certificate so revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the

regulatory body.

Sec. 43. That section 21-2632, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2632. Except for these provisions Nothing in the Limited Liability Company Act concerning the personal liability of members, managers, employers, and agents of a limited liability company organized under the act, nothing in the act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such individuals rendering professional services or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, employee, or agent of a limited liability company and rendering professional services or engaging in the practice of the profession through a limited liability company.

Sec. 44. That section 21-2634, Revised Statutes Supplement, 1993, be amended to read as follows:

21-2634. The filing fee for all filings pursuant to the Limited Liability Company Act, including amendments, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization and for filing an application for a certificate of authority as a foreign limited liability company shall be one hundred dollars plus such recording fees and ten dollars for a certificate. A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. Until January 1, 1995, the State Treasurer shall credit the fees to the General Fund. On and after January 1, 1995, the State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund. The Secretary of State shall charge and collect:

(1) The following fees for filing the original articles of organization and issuing certificates of organization if the capital of the limited liability company is:-

CAPITAL	FILING FEE
Not in excess of \$50,000 .....	\$100
\$50,001 to \$100,000 .....	\$200
In excess of \$100,000 .....	\$200 for the first \$100,000 plus \$2.00 for each additional \$1,000; not to exceed a fee of \$25,000;

(2) For amending the articles of organization, a filing fee of fifteen dollars and three dollars per page, together with the appropriate fee set out in subdivision (1) of this section if the amendment is to increase the amount of capital;

(3) For filing a statement of intent to dissolve, fifteen dollars and three dollars per page;

(4) For filing articles of dissolution, issuing a certificate of dissolution, and canceling the certificate of organization, twenty-five dollars and three dollars per page;

(5) For filing a statement of change of address of registered office or change of registered agent, or both, fifteen dollars and three dollars per page;

(6) An annual tax of forty-three dollars at minimum, due and payable January 2 of each year. The tax shall be delinquent if not paid by April 16, and in addition to the tax, a late fee of fifty dollars shall then be due;

(7) For any service of process on him or her as resident agent of a limited liability company, five dollars, which may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action;

(8) For filing foreign application for certificate of authority, one hundred dollars and three dollars per page;

(9) For filing foreign amended application for certificate of authority, fifteen dollars, plus recording fee;

(10) For filing withdrawal of a foreign company, fifteen dollars, plus recording fee; and

(11) For filing a change of street address in any city or village in this state of the registered office of any registered agent who serves as registered agent for more than one company, fifty dollars, plus recording fee.

The fees and taxes set forth in this section shall be paid to the Secretary of State who shall remit them to the State Treasurer for credit to the General Fund.

Sec. 45. The provisions of the Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and

conditions as the Nebraska Supreme Court determines to be necessary and appropriate. Articles of organization of limited liability companies organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Sec. 46. Any one or more limited liability companies may merge or consolidate with or into any one or more limited liability companies, limited partnerships, or corporations, and any one or more limited partnerships or corporations may merge or consolidate with or into any one or more limited liability companies.

Sec. 47. (1) Each constituent entity shall enter into a written plan of merger or consolidation which shall be approved in accordance with section 48 of this act.

(2) The plan of merger or consolidation shall set forth:

(a) The name of each limited liability company, corporation, or limited partnership which is a constituent entity in the merger or consolidation and the name of the surviving entity into which each other constituent entity proposes to merge or the new entity into which each constituent entity proposes to consolidate;

(b) The terms and conditions of the proposed merger or consolidation;

(c) The manner and basis of converting the interests in each limited liability company, the shares of stock or other interests in each corporation, and the interests in each limited partnership that is a constituent entity in the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving entity or the new entity, or of any other limited liability company, corporation, limited partnership, or other entity, or, in whole or in part, into cash or other property;

(d) In the case of a merger, such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired;

(e) In the case of a consolidation, all of the statements required to be set forth in articles of organization of any new entity that is a limited liability company, articles or certificate of incorporation of any new entity that is a corporation, or certificate of limited partnership of any new entity that is a limited partnership, as the case may be; and

(f) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable.

Sec. 48. (1)(a) A proposed plan of merger or consolidation complying with the requirements of section 47 of this act shall be approved in the manner provided by this section.

(b) A limited liability company party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved by a two-thirds majority in interest of the members of such limited liability company.

(c) A corporation party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved in the manner and by the vote required by the laws of this state.

(d) A limited partnership party to a proposed merger or consolidation shall have the plan of merger authorized and approved in the manner and by the vote required by its limited partnership agreement and in accordance with the partnership laws of this state.

(2) After a merger or consolidation is authorized, unless the plan of merger or consolidation provides otherwise, and at any time before articles of merger or consolidation are filed, the plan of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or consolidation or, if none is set forth, as follows:

(a) By a two-thirds majority in interest of the members of each limited liability company that is a constituent entity;

(b) By the vote of the board of directors of any corporation that is a constituent entity; and

(c) By the partners of any limited partnership that is a constituent entity in accordance with its partnership agreement and applicable partnership law.

Sec. 49. (1) After a plan of merger or consolidation is approved as provided in section 48 of this act, the surviving entity or the new entity shall deliver to the Secretary of State for filing articles of merger or consolidation duly executed by each constituent entity setting forth:

(a) The name of each constituent entity;

(b) The plan of merger or consolidation;

(c) The effective date of the merger or consolidation if later than the date of filing of the articles of merger or consolidation;

(d) The name of the surviving entity or the new entity; and

(e) A statement that the plan of merger or consolidation was duly authorized and approved by each constituent entity in accordance with section 48 of this act.

(2) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the plan of merger or consolidation.

(3) Duplicate originals of the articles of merger or consolidation shall be delivered to the Secretary of State who, after determining that such documents appear in all respects to conform to the requirements of sections 46 to 51 of this act, shall file one of the duplicate originals and endorse on each duplicate original the word filed with the month, day, and year of the filing thereof and return one duplicate original to the surviving entity or the new entity or its representative.

Sec. 50. Consummation of a merger or consolidation shall have the effects provided in this section:

(1) The constituent entities party to the plan of merger or consolidation shall be a single entity, which in the case of a merger shall be the entity designated in the plan of merger as the surviving entity and in the case of a consolidation shall be the new entity provided for in the plan of consolidation;

(2) The separate existence of each constituent entity party to the plan of merger or consolidation, except the surviving entity or the new entity, shall cease;

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises, of a public as well as a private nature, of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the form of existence of the surviving entity or the new entity;

(4) All property, real, personal, and mixed, all debts due on whatever account, including promises to make contributions to stated capital and subscriptions, all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;

(5) The title to all real estate and any interest therein vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving entity or the new entity shall be responsible and liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place or the surviving entity or the new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;

(8) In the case of a merger, depending upon whether the surviving entity or the new entity is a limited liability company, a corporation, or a limited partnership, the articles of organization of the limited liability company, articles or certificate of incorporation of the corporation, or certificate of limited partnership of the limited partnership, as the case may be, shall be amended to the extent provided in the articles of merger;

(9) In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organization, articles or certificate of incorporation, or certificate of limited partnership, as the case may be, of the new entity, shall be deemed to be the original articles of organization, articles or certificate of incorporation, or certificate of limited partnership of the new entity;

(10) The membership or other interests in a limited liability company, shares or other interests in a corporation, or partnership or other interests in a limited partnership that is a constituent entity, as the case may be, that are to be converted or exchanged into interests, shares or other securities, cash, obligations, or other property under the terms of the articles of merger or consolidation shall be so converted, and the former holders thereof shall be entitled only to the rights provided in the articles of merger or consolidation or the rights otherwise provided by law; and

(11) Nothing in sections 46 to 51 of this act shall abridge or



impair any dissenter's or appraisal rights that may otherwise be available to the members or shareholders or other holders of an interest in any constituent entity.

Sec. 51. (1) Any one or more domestic limited liability companies may merge or consolidate with or into one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships or any one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships may merge or consolidate with or into any one or more limited liability companies of this state if:

(a) The merger or consolidation is permitted by the law of the state or jurisdiction under whose laws each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger or consolidation;

(b) The foreign constituent entity complies with section 49 of this act if it is the surviving entity or the new entity; and

(c) Each domestic constituent entity complies with the applicable provisions of sections 46 to 48 of this act and, if it is the surviving entity or the new entity, with section 49 of this act.

(2) Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity or the new entity is to be governed by the laws of any state other than this state or by the laws of the District of Columbia or of any foreign country, then the surviving entity or the new entity shall agree:

(a) That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving entity or the new entity arising from the merger or consolidation; and

(b) To irrevocably appoint the Secretary of State as its agent for service of process in any such proceeding, and the surviving entity or the new entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.

(3) The effect of such merger or consolidation shall be as provided in section 50 of this act if the surviving entity or the new entity is to be governed by the laws of this state. If the surviving entity or the new entity is to be governed by the laws of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as provided in such section except insofar as the laws of such other jurisdiction provide otherwise.

Sec. 52. Notice of organization, amendment, merger, consolidation, or statement of intent to dissolve must be published three successive weeks in some legal newspaper of general circulation near the registered office of the limited liability company. A notice of organization must show (1) the name of the limited liability company, (2) the address of the registered office, (3) the general nature of the business to be transacted, (4) the time of commencement and termination of the limited liability company, and (5) by what members or managers the affairs of the limited liability company are to be conducted. A brief resume of any amendment, merger, or consolidation of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published. Whenever any limited liability company is voluntarily dissolved, notice of the dissolution thereof and the terms and conditions of such dissolution and the names of the persons who are to manage the company affairs and distribute its assets and their official titles, with a statement of assets and liabilities of the limited liability company, shall be published three successive weeks in some legal newspaper of general circulation within the county in which the registered office of the limited liability company is located. Proof of publication of any of the notices shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

Sec. 53. That section 25-1081, Revised Statutes Supplement, 1993, be amended to read as follows:

25-1081. A receiver may be appointed by the district court (1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his or her claim, or between partners, limited liability company members, or others jointly owning or interested in any property or fund on the application of any party to the suit when the property or fund is in danger of being lost, removed, or materially injured, (2) in an action for the foreclosure of a mortgage when the mortgaged

property is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the mortgage debt, (3) after judgment or decree to carry the judgment into execution, to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal, (4) in all cases provided for by special statutes, and (5) in all other cases when receivers have heretofore been appointed by the usages of courts of equity.

Sec. 54. That section 28-613, Revised Statutes Supplement, 1993, be amended to read as follows:

28-613. (1) A person commits a Class I misdemeanor if he or she solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he or she is subject as:

- (a) Agent or employee; or
- (b) Trustee, guardian, or other fiduciary; or
- (c) Lawyer, physician, accountant, appraiser, or other professional advisor; or
- (d) Officer, director, partner, limited liability company member, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or
- (e) Duly elected or appointed representative or trustee of a labor organization or employee of a welfare trust fund; or
- (f) Arbitrator or other purportedly disinterested adjudicator or referee.

(2) A person who holds himself or herself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services commits a Class I misdemeanor if he or she solicits, accepts, or agrees to accept any benefit to alter, modify, or change his or her selection, appraisal, or criticism.

(3) A person commits a Class I misdemeanor if he or she confers or offers or agrees to confer any benefit the acceptance of which would be an offense under subsection (1) or (2) of this section.

Sec. 55. That section 29-1507, Revised Statutes Supplement, 1993, be amended to read as follows:

29-1507. When any offense ~~shall be~~ is committed upon or in relation to any property belonging to several partners, limited liability company members, or owners, and an indictment for such offense is returned, the allegation of ownership therein shall be sufficient if it alleges that such property belonged to any one or more of such partners, limited liability company members, or owners, without naming all of them.

Sec. 56. That section 30-2717, Revised Statutes Supplement, 1993, be amended to read as follows:

30-2717. Sections 30-2716 to 30-2733 do not apply to (i) an account established for a partnership, limited liability company, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

Sec. 57. That section 37-101, Revised Statutes Supplement, 1993, be amended to read as follows:

37-101. For purposes of the Game Law, unless the context otherwise requires:

(1) Captive propagation shall mean to hold live raptors in a controlled environment that is intensively manipulated by humans for the purpose of producing raptors of selected species and that has boundaries designed to prevent raptors, eggs, or gametes of the selected species from entering or leaving the controlled environment;

(2) Commercial exploitation shall mean buying, selling, or bartering for economic or financial gain by any person, partnership, limited liability company, association, or corporation;

(3) Commission shall mean the Game and Parks Commission;

(4) Ecologic harm shall mean significant loss, disadvantage, or injury to the relationships between organisms and their environment;

(5) Economic harm shall mean significant loss, disadvantage, or injury to personal or material resources;

(6) Falconry shall mean the sport of taking quarry by means of a trained raptor;

(7) Fur harvesting shall mean taking or attempting to take any fur-bearing animal by any means as prescribed by rules and regulations of the commission;

(8) Fur-bearing animals shall mean all beaver, martens, minks except

mutation minks, muskrats, raccoons, opossums, and otters;

(9) Game shall mean all game fish, bullfrogs, snapping turtles, tiger salamanders, mussels, crows, game animals, fur-bearing animals, game birds, and all other birds and creatures protected by the Game Law;

(10) Game animals shall mean all antelope, cottontail rabbits, deer, elk, mountain sheep, and squirrels;

(11) Game birds shall mean coots, cranes, curlew, doves, ducks, geese, grouse, partridges, pheasants, plovers, prairie chickens, quail, rails, snipes, swans, woodcocks, wild turkeys, and all migratory waterfowl;

(12) Game fish shall mean all fish except buffalo, carp, gar, quillback, sucker, and gizzard shad;

(13) Hunt shall mean to take, pursue, shoot, kill, capture, collect, or attempt to take, pursue, shoot, capture, collect, or kill;

(14) Officer shall mean every person authorized to enforce the Game Law;

(15) Person, owner, proprietor, grantee, lessee, and licensee shall mean and include individuals, partnerships, limited liability companies, associations, corporations, and municipalities;

(16) Raptor shall mean any bird of the Falconiformes or Strigiformes, except the golden and bald eagles;

(17) Raw fur shall mean the green pelts of any fur-bearing animal except commercially reared mutations;

(18) Trapping shall mean to take or attempt to take any fur-bearing animal by any snare, steel-jawed spring trap, or box trap; and

(19) Upland game birds shall mean all species and subspecies of quail, partridges, pheasants, wild turkeys, and grouse, including prairie chickens, on which an open season is in effect.

Sec. 58. That section 44-2821, Revised Statutes Supplement, 1993, be amended to read as follows:

44-2821. (1) Any health care provider who fails to qualify under the Nebraska Hospital-Medical Liability Act shall not be covered by the provisions of such act and shall be subject to liability under doctrines of common law. If a health care provider shall not so qualify, the patient's remedy shall not be affected by the terms and provisions of the act.

(2) If a health care provider shall qualify under the act, the patient's exclusive remedy against the health care provider or his or her partner, limited liability company member, employer, or employees for alleged malpractice, professional negligence, failure to provide care, breach of contract relating to providing medical care, or other claim based upon failure to obtain informed consent for an operation or treatment shall be as provided by the act unless the patient shall have elected not to come under the provisions of the act. Unless the patient or his or her representative shall have (a) elected not to be bound by the terms of the act, (b) filed such election with the director in advance of any treatment, act, or omission upon which any claim or cause of action is based, and (c) notified the health care provider of election as soon as is reasonable under the circumstances that such patient has so elected, it shall be conclusively presumed that the patient has elected to be bound by the terms and provisions of the act. Such election may be made by either legal parent for an unborn or newborn child. Unless a legal parent of an unborn child or the guardian or other representative of a minor or incompetent makes the election in the manner provided in the act for such unborn person, minor, or incompetent, such person shall be deemed to be subject to the terms and provisions of the act.

(3) An election of a patient not to be bound by the act shall be effective for a period of two years after filing unless such election is withdrawn by the patient and shall be ineffective after such two-year period unless renewed in writing and filed with the director. The patient or his or her representative may revoke the election in writing at any time and a copy of such revocation shall be forwarded to the director within five days after the same is made.

(4) Each health care provider who has qualified under the act shall post and keep posted in his or her waiting room or other suitable location a sign of a size and type to be prescribed by the director stating: (name of health care provider) has qualified under the provisions of the Nebraska Hospital-Medical Liability Act. Patients will be subject to the terms and provisions of that act unless they file a refusal to be bound by the act with the Director of Insurance of the State of Nebraska.

Sec. 59. That section 44-2824, Revised Statutes Supplement, 1993, be amended to read as follows:

44-2824. (1) To be qualified under the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, partner, or limited liability company member shall:

(a) File with the director proof of financial responsibility, pursuant to section 44-2827 or 44-2827.01, in the amount of two hundred thousand dollars for each occurrence. In the case of physicians or nurse anesthetists and their employers, employees, partners, or limited liability company members an aggregate liability amount of six hundred thousand dollars for all occurrences or claims made in any policy year for each named insured shall be provided. In the case of hospitals and their employees, an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year or risk-loss trust year shall be provided. Such policy may be written on either an occurrence or a claims-made basis. Any risk-loss trust shall be established and maintained only on an occurrence basis. Such qualification shall remain effective only as long as insurance coverage or risk-loss trust coverage as required remains effective; and

(b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsections (1) and (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the act and who fails to renew or continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under the act.

Sec. 60. That section 44-2837, Revised Statutes Supplement, 1993, be amended to read as follows:

44-2837. (1) The purpose of sections 44-2837 to 44-2839 is to make malpractice liability insurance available to risks as defined in this section.

(2) There is hereby created the Residual Malpractice Insurance Authority. The Department of Insurance is hereby designated as the authority for the purposes of the Nebraska Hospital-Medical Liability Act. The authority shall be empowered to engage in writing medical malpractice liability insurance in this state pursuant to existing law and authorized to insure the health care provider against other liability for injury to persons or property caused by agents, employees, partners, or limited liability company members of the health care provider or by property used in or activities arising from the operations or business of the health care provider. Such insurance coverage against other liability may be provided to the health care provider by the authority only as supplemental professional liability insurance.

(3) The director may appoint a risk manager for the authority. The separate, personal, or independent assets of the risk manager shall not be liable for or subject to use or expenditure for the purpose of providing insurance by the authority.

(4) In the administration and provision for malpractice liability insurance by the authority, the risk manager shall:

(a) Be subject to all laws and regulations of this state which apply to malpractice insurance as provided in existing law;

(b) Prepare and file appropriate forms with the Department of Insurance;

(c) Prepare and file premium rates with the Department of Insurance which shall be based on accepted actuarial principles and accepted practices in the insurance industry;

(d) Perform the underwriting function;

(e) Dispose of all claims and litigation arising out of insurance policies;

(f) Maintain adequate books and records;

(g) File an annual financial statement regarding its operations under the Nebraska Hospital-Medical Liability Act with the Department of Insurance on forms prescribed by the director;

(h) Obtain private reinsurance for the authority, if available, and the cost thereof shall be paid from the Excess Liability Fund;

(i) Prepare and file a plan of operations with the director for

approval; and

(j) Act fairly, reasonably, and responsibly in administering the plan.

(5) The risk manager shall receive as compensation for his or her services a percentage of all premiums received under the terms of this section which shall be computed on a fair and equitable basis as determined by the director. The compensation may be adjusted by the director from time to time.

Sec. 61. That section 44-32,125, Revised Statutes Supplement, 1993, be amended to read as follows:

44-32,125. Any director, officer, employee, partner, or limited liability company member of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of the health maintenance organization shall be responsible for such funds in a fiduciary relationship to the health maintenance organization. A health maintenance organization shall maintain in force a fidelity bond or fidelity insurance on such individuals in an amount not less than two hundred fifty thousand dollars for each health maintenance organization. The requirements of this section may be met for each of two or more health maintenance organizations owned by a common parent if the parent maintains the bond or insurance on behalf of the health maintenance organizations and any other carrier or carriers owned by the parent in an aggregate amount of not less than the lesser of (1) two hundred fifty thousand dollars times the number of such health maintenance organizations and such other carrier or carriers or (2) five million dollars.

Sec. 62. That section 44-5903, Revised Statutes Supplement, 1993, be amended to read as follows:

44-5903. For purposes of the Insurers Examination Act:  
(1) Company shall mean any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the director;

(2) Department shall mean the Department of Insurance;

(3) Director shall mean the Director of Insurance;

(4) Examiner shall mean any individual having been appointed by the director to conduct an examination under the act;

(5) Insurer shall mean any person authorized to transact the business of insurance, including any fraternal benefit society, reciprocal exchange, advisory organization, assessment association, unincorporated mutual association, hospital or physicians mutual insurance association, and professional association mutual insurance company; and

(6) Person shall mean any individual, aggregation of individuals, trust, association, partnership, limited liability company, or corporation or any affiliate thereof.

Sec. 63. That section 48-115, Revised Statutes Supplement, 1993, be amended to read as follows:

48-115. The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written. For the purposes of the Nebraska Workers' Compensation Act, (a) volunteer firefighters of any fire department of any rural or suburban fire protection district, city, or village, which fire department is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such rural or suburban fire protection district, city, or village while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency that the volunteer firefighters may be officially called to participate in, (b) members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department for membership therein to the board of directors, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of the rural or suburban fire protection district, city, or village, (c) members of such fire department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council, or board and thereafter shall not be

considered employees of such rural or suburban fire protection district, city, or village, (d) firefighters of any fire department of any rural or suburban fire protection district, city, or village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief, (e) any members of the state Civil Defense Agency, any local organization for civil defense, or any civil defense mobile support unit, which state Civil Defense Agency, local organization for civil defense, or civil defense mobile support unit is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such state Civil Defense Agency, local organization for civil defense, or civil defense mobile support unit while in the performance of their duties as members of such state Civil Defense Agency, local organization, or mobile support unit, (f) any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act, (g) volunteer ambulance drivers and attendants who provide ambulance service for any county, city, or village or any combination of such county, city, or village under the authority of section 13-303 shall be deemed employees of the county, city, or village or combination thereof while in the performance of their duties as such ambulance drivers or attendants and shall be considered as having entered into and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a hospital or other place where the ambulance they are to use is located or to any emergency in which the volunteer drivers or attendants may be officially called to participate, but such volunteer ambulance drivers or attendants shall be considered as acting in the performance and within the scope of their duties outside of the corporate limits of their respective county, city, or village only if officially directed to do so, (h) before such volunteer ambulance drivers or attendants shall be entitled to benefits under the Nebraska Workers' Compensation Act, they shall be confirmed to perform such duties by the county board or the governing body of the city or village or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of the county, city, or village or combination thereof and may be removed by majority vote of such county board or governing body of the city or village, (i) members of a law enforcement reserve force appointed in accordance with section 81-1438 shall be deemed employees of the county or city for which they were appointed, and (j) any inmate working for the Department of Correctional Services pursuant to section 81-1827 shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act; and

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) and (2) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

(3) Every executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation shall be an employee of such corporation under the Nebraska Workers' Compensation Act, except that an executive officer of a Nebraska corporation who owns twenty-five percent or more of the common stock of such corporation may waive his or her right to coverage. Such waiver shall be in writing and filed with the secretary of the corporation and the Nebraska

Workers' Compensation Court. Such waiver, as prescribed by the compensation court, shall include a statement in substantially the following form: Notice. I am aware that health and accident insurance policies frequently exclude coverage for personal injuries caused by accident or occupational disease arising out of and in the course of employment. Before waiving my rights to coverage under the Nebraska Workers' Compensation Act, I certify that I have carefully examined the terms of my health and accident coverage. Such waiver shall become effective from the date of receipt by the compensation court and shall remain in effect until the waiver is terminated by the officer in writing and filed with the secretary of the corporation and the compensation court. The termination of the corporate executive officer's waiver shall be effective upon receipt of the termination by the compensation court. It shall not be permissible to terminate a waiver prior to one year after the waiver has become effective.

(4) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis may elect to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act, if he or she (a) files with his or her current workers' compensation insurer written notice of election to have the same rights as an employee only for purposes of workers' compensation insurance coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person or (b) gives notice of such election and such insurer collects a premium for such coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person. This election shall be effective from the date of receipt by the insurer for the current policy and subsequent policies issued by such insurer until such time as such employer, partner, limited liability company member, or self-employed person files a written statement withdrawing such election with the current workers' compensation insurer or until such coverage by such insurer is terminated, whichever occurs first. When so included, the individual employer, partner, limited liability company member, or self-employed person shall have the same rights as an employee only with respect to the benefits provided under the Nebraska Workers' Compensation Act. If any individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and any health, accident, or other insurance policy issued to or renewed by such person after July 10, 1984, contains an exclusion of coverage, if the insured is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person.

Sec. 64. That section 48-125.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-125.01. Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property or records belonging to such employer, after one of his or her employees has been injured within the purview of the Nebraska Workers' Compensation Act, and with intent to avoid the payment of compensation under such act to such employee or his or her dependents, shall be guilty of a Class I misdemeanor. In any case when such employer is a corporation, any officer or employee thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under the Nebraska Workers' Compensation Act, shall be also individually guilty of a Class I misdemeanor as well as jointly and severally liable with such corporation for any fine imposed upon the corporation. In any case when such employer is a limited liability company, any member or manager thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under the Nebraska Workers' Compensation Act, shall be also individually guilty of a Class I misdemeanor as well as jointly and severally liable with such limited liability company for any fine imposed upon the limited liability company.

Sec. 65. That section 48-652, Revised Statutes Supplement, 1993, be amended to read as follows:

48-652. (1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other. (b) A

separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. In addition to such credits, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the account of the Nebraska Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. Should the total credits as of such date to all employers' experience accounts be equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before March 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of a period of employment from which the claimant has left work voluntarily without good cause or employment from which he or she has been discharged for misconduct connected with his or her work and concerning which separation the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner, and no benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (e)(2) of section 48-627. (b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (e)(1) of section 48-627. (c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be



terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

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

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

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

Sec. 66. That section 48-1704, Revised Statutes Supplement, 1993, be amended to read as follows:

48-1704. (1) Except as otherwise provided by the Farm Labor Contractors Act, no person shall act as a farm labor contractor and engage in farm labor contracting activity unless such person holds a valid license issued by the department.

(2) Farm labor contractor licenses may be issued by the department only as follows:

(a) To an individual operating as a sole proprietor under the person's own name or under an assumed business name registered with the state;

(b) To two or more individuals operating as a partnership under their own names or under an assumed business name registered with the state; and

(c) To a corporation, limited liability company, or cooperative association authorized to do business in Nebraska.

(3) An application for a license as a farm labor contractor shall be sworn to by the applicant and shall be written on a form prescribed by the department. The form shall include, but not be limited to, the following:

(a) The applicant's name and Nebraska address and all other temporary and permanent addresses the applicant uses or knows will be used in the future;

(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor, including the license number and state of licensure, the vehicle number, and the name and address of the vehicle owner for all vehicles used for farm labor contracting activity;

(c) Whether or not the applicant was ever denied a license under the Farm Labor Contractors Act or in any other jurisdiction under a similar law or had such a license revoked or suspended; and

(d) The names and addresses of all persons financially interested, whether as partners, limited liability company members, shareholders, associates, or profit sharers in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of such persons was ever denied a license under the act or in any other jurisdiction or had such a license revoked or suspended.

Sec. 67. That section 49-1408, Revised Statutes Supplement, 1993, be amended to read as follows:

49-1408. Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, limited liability company member, director, or officer; or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five percent equity interest or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest. An individual who occupies a confidential professional relationship protected by law shall be exempt from this section. This section shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker.

Sec. 68. That section 54-726.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-726.04. Any person ~~or corporation~~ who imports, or aids or abets the importation of any swine into the State of Nebraska, knowing or having reason to believe such swine to be infected, affected, or suspected of being affected, with any dangerous, infectious, contagious, or otherwise transmissible disease, without first having obtained a permit from the Department of Agriculture, shall be deemed guilty of a Class IV misdemeanor, and all such swine shall be declared to be contraband to be forfeited to the State of Nebraska to be disposed of by the department without compensation or indemnity. The State of Nebraska shall be reimbursed by the owner of such swine for the cost of destruction, and action may be maintained by the department to recover such costs. All money collected shall be deposited into the state treasury and by the State Treasurer credited for credit to the General Fund.

Sec. 69. That section 54-761, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-761. Any person; ~~firm; association; or corporation;~~ who shall ~~violate~~ violates any of the provisions of sections 54-754 to 54-760 or section 54-762, shall be deemed guilty of a Class I misdemeanor.

Sec. 70. That section 54-1510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-1510. Upon application of the Department of Agriculture, any district court of competent jurisdiction may issue a mandatory injunction against any person; ~~firm; or corporation~~ who fails to comply with the provisions of sections 54-1501 to 54-1512.

Sec. 71. That section 54-1603, Revised Statutes Supplement, 1992, be amended to read as follows:

54-1603. Every person, firm, partnership, limited liability company, association, or corporation subject to the provisions of sections 54-1601 to 54-1605 shall observe, perform, and comply with all rules, regulations, and requirements fixed, established, or specified by the University of Nebraska Institute of Agriculture and Natural Resources or its designated agents as to what SFF swine raised or to be raised in Nebraska shall be eligible for accreditation as provided by such sections as to standards, requirements, and forms of and for accreditation under such sections. No accreditation within the provisions of such sections shall be made or authorized except by or through the institute or its designated agents.

Sec. 72. That section 54-1802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-1802. As used in sections 54-1801 to 54-1808 For purposes of the Nebraska Livestock Sellers Protective Act, unless the context otherwise requires:

- (1) Director shall mean the Director of Agriculture;
- (2) Slaughter livestock shall mean cattle, sheep, and swine produced or fed in this state and destined for immediate slaughter;
- (3) Purchaser shall mean any person, firm, corporation, or association engaged in the purchase of slaughter livestock in excess of five hundred animal units per year based upon two hundred sixty slaughtering days;
- (4) Animal unit shall consist of one head of cattle, or three calves, under four hundred fifty pounds, or five hogs, or ten sheep or lambs;
- (5) Insolvent shall mean that a person either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Act;
- (6) Person shall include individuals, firms, associations, limited liability companies, or corporations or employees, ~~or officers, or limited liability company members~~ thereof; and
- (7) Purchase of livestock for slaughter shall mean the purchase of livestock for immediate use in manufacturing or preparing meat or meat food products.

Sec. 73. That section 54-1902, Revised Statutes Supplement, 1993, be amended to read as follows:

54-1902. For purposes of the Nebraska Meat and Poultry Inspection Law, unless the context otherwise requires:

- (1) Director shall mean the Director of Agriculture;
- (2) Department shall mean the Department of Agriculture;
- (3) Person shall include individuals, partnerships, limited liability companies, corporations, and associations and any officer, agent, ~~partner, limited liability company member,~~ or employee thereof;
- (4) Intrastate commerce shall mean commerce within this state;
- (5) Livestock shall mean any cattle, sheep, swine, goats, horses, mules, other equines, and other mammalian species as the director may

determine, either living or dead;

(6) Livestock product shall mean any carcass, part thereof, meat, or meat food product of any livestock;

(7) Meat food product shall mean any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, except products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat or poultry industry and which are exempt from definition as a meat food product by the director under such conditions as he or she may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or other mammalian species as designated by the director shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats;

(8) Poultry shall mean any domesticated bird or other avian species as the director may designate, either living or dead;

(9) Poultry product shall mean any poultry carcass or part thereof or any product which is made wholly or in part from any poultry carcass or part thereof, except products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempt by the director from definition as a poultry product under such conditions as he or she may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products;

(10) Capable of use as human food shall apply to any wholesome livestock or poultry carcass or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the director to preclude its use as human food or it is naturally inedible by humans;

(11) Prepared shall mean slaughtered, canned, salted, stuffed, rendered, boned, cut up, frozen, or otherwise manufactured or processed in any manner;

(12) Adulterated shall apply to any livestock product or poultry product under one or more of the following circumstances:

(a) If it fails to conform to the requirements established by the Nebraska Pure Food Act and the codes adopted by reference in sections 81-2,257 to 81-2,261;

(b) If it has been subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug and Cosmetic Act approved June 25, 1938, (52 Stat. 1040) and acts amendatory thereof or supplementary thereto; or

(c) If it is margarine containing animal fat and any of the raw material used therein consists in whole or in part of any filthy, putrid, or decomposed substance;

(13) Misbranded shall apply to any livestock product or poultry product under one or more of the following circumstances:

(a) If it fails to conform to the requirements established by the Nebraska Pure Food Act; or

(b) If it fails to bear directly thereon and on its containers, as the director may by regulation prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Exemptions as to livestock products not in containers may be established by regulations prescribed by the director and exemptions as to small packages may be established for livestock products or poultry products in the same manner;

(14) Label shall mean a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article;

(15) Labeling shall mean all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers or (b) accompanying such article;

(16) Container or package shall mean any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover;

(17) Shipping container shall mean any container used or intended for use in packaging the product packed in an immediate container;

(18) Immediate container shall mean any consumer package or any other container in which livestock products or poultry products which are not

consumer-packaged are packed;

(19) Federal Meat Inspection Act shall mean the act so entitled approved March 4, 1907, (34 Stat. 1260) as amended by the Wholesome Meat Act (81 Stat. 584), Federal Poultry Products Inspection Act shall mean the act so entitled approved August 28, 1957, (71 Stat. 441) as amended by the Wholesome Poultry Products Act (82 Stat. 791), and federal acts shall mean the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act;

(20) Pesticide chemical, food additive, color additive, and raw agricultural commodity shall have the same meanings for purposes of the Nebraska Meat and Poultry Inspection Law as under the Federal Food, Drug and Cosmetic Act approved June 25, 1938, (52 Stat. 1040);

(21) Official mark shall mean the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article, livestock, or poultry under the Nebraska Meat and Poultry Inspection Law;

(22) Official inspection legend shall mean any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with the Nebraska Meat and Poultry Inspection Law;

(23) Official certificate shall mean any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under the Nebraska Meat and Poultry Inspection Law;

(24) Official device shall mean any device prescribed or authorized by the director for use in applying any official mark;

(25) Establishment shall mean any building or structure in which slaughtering, butchering, meat canning, meat packing, meat manufacturing, poultry canning, poultry packing, poultry manufacturing, pet feed manufacturing, or rendering is carried on, except where such operations are under federal inspection, and the ground upon which such building or structure is erected and so much ground adjacent thereto as is used in carrying on the business of such establishment, including drains, gutters, and cesspools used in connection with the establishment and any place or vehicle where livestock, poultry, livestock products, poultry products, meat food products, or poultry food products are prepared, manufactured, stored, sold, offered for sale, or exposed for sale;

(26) Rendering shall mean the business of processing livestock or poultry or carcasses or parts thereof not intended or capable for use as human food;

(27) Pet feed manufacturing shall mean the business of processing livestock or poultry or carcasses or parts thereof into small animal feed;

(28) Official establishment shall mean any establishment as determined by the director at which ante mortem and post mortem inspection of livestock or poultry or the inspection of the manufacturing of livestock products or poultry products for human consumption is maintained under the authority of the Nebraska Meat and Poultry Inspection Law;

(29) Inspector shall mean an employee or official or agent of the State of Nebraska authorized by the director, or any employee or official of the federal government or any governmental subdivision of this state authorized by the director, to perform any inspection functions under the Nebraska Meat and Poultry Inspection Law under an agreement between the director and any governmental subdivision or other governmental agency;

(30) License shall mean a license issued under the Nebraska Meat and Poultry Inspection Law by the director;

(31) Licensed establishment shall mean any of the establishments as defined in this section which are licensed under the terms of the Nebraska Meat and Poultry Inspection Law or pursuant to the terms of any other act administered by the director; and

(32) Reinspection shall include inspection of the preparation of livestock products and poultry products, as well as reexamination of articles previously inspected.

Sec. 74. That section 54-2001, Revised Statutes Supplement, 1993, be amended to read as follows:

54-2001. For purposes of the Nebraska Livestock Auction Market Development Act, unless the context otherwise requires:

(1) Certified veterinarian shall mean an accredited veterinarian employed by or under contract to a livestock market to perform the duties required by the act. Certification shall be made by the director in accordance with section 54-2006;

(2) Bureau shall mean the Department of Agriculture, Bureau of Animal Industry;

(3) Department shall mean the Department of Agriculture;

(4) Director shall mean the Director of Agriculture;

(5) License shall mean the authorization for a livestock market issued under the act;

(6) Livestock shall mean cattle, calves, sheep, swine, horses, mules, and goats;

(7) Livestock market shall mean any place, establishment, or facility operated or managed as a market for livestock consisting of pens or other enclosures and their appurtenances where livestock are received, held, sold, or kept for resale or shipment in commerce, but shall not include: (a) Livestock auction markets licensed under the act Nebraska Livestock Auction Market Development Act; (b) any place or operation where Future Farmers of America, 4-H groups, or private fairs conduct sales of livestock; (c) any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock when such breeders shall assume all responsibility of such sale and the title of livestock sold; or (d) licensed livestock dealers operating pursuant to the act Nebraska Livestock Dealer Licensing Act;

(8) Livestock market operator shall mean any person engaged in the business of conducting or operating a livestock market, whether personally or through agents or employees;

(9) Person shall mean any individual, firm, association, partnership, limited liability company, or corporation; and

(10) State Veterinarian shall mean the chief of the Bureau of Animal Industry, Department of Agriculture.

Sec. 75. That section 59-812, Revised Statutes Supplement, 1993, be amended to read as follows:

59-812. Any corporation, joint-stock company, limited liability company, or other association which is charged with violating any of the provisions of sections 59-801 to 59-828 and any president, director, treasurer, officer, limited liability company member, or agent thereof may be joined as a party in any proceeding, civil or criminal, to enforce such sections.

Sec. 76. That section 59-814, Revised Statutes Supplement, 1993, be amended to read as follows:

59-814. The court may also, in its discretion, enjoin ~~such~~ the officers, agents, or servants, ~~or members~~ of such corporation, joint-stock company, ~~limited liability company~~, or other association ~~or the managers, agents, or servants of such limited liability company~~ from continuing in its service and enjoin any such corporation, joint-stock company, limited liability company, or other association from continuing their employment therein as the case shall seem to require.

Sec. 77. That section 59-1735, Revised Statutes Supplement, 1993, be amended to read as follows:

59-1735. The disclosure document required by section 59-1732 shall contain the following:

(1) The name of and the office held by the seller's officers, directors, trustees, general or limited partners, and limited liability company members, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities;

(2) A statement whether the seller or any person identified in subdivision (1) of this section:

(a) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(b) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(c) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, action affecting any vocational license; and

(3) With respect to persons identified in subdivision (1) of this section:

(a) A description of their work experience for the past five years, including a list of principal occupations and employers during such time. Such five-year period shall run from the date of the disclosure filed with the Department of Banking and Finance; and

(b) A listing of each such person's educational background,

including the names and addresses of schools attended, dates of attendance, and degrees received.

Sec. 78. That section 59-1739, Revised Statutes Supplement, 1993, be amended to read as follows:

59-1739. The disclosure document required by section 59-1732 shall contain a copy of a financial statement of the seller, not more than twelve months old, together with a statement of any material changes in the financial condition of the seller from the date thereof. Such financial statement shall either be audited or be signed under penalty of perjury by one of the seller's officers, directors, trustees, general or limited partners, or limited liability company members. The declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate. If a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the information required by this section may be submitted in the same manner for the parent corporation if the corresponding financial statement of the seller is also provided and the parent corporation absolutely and irrevocably has agreed to guarantee all obligations of the seller.

Sec. 79. That section 60-348, Revised Statutes Supplement, 1993, be amended to read as follows:

60-348. Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of sections 60-301 to 60-347 for which a penalty is not otherwise provided shall be guilty of a Class III misdemeanor.

Sec. 80. That section 60-6,247, Revised Statutes Supplement, 1993, be amended to read as follows:

60-6,247. It shall be unlawful for any person; ~~partnership~~; or ~~limited liability company~~ to operate or cause to be operated on the highways in the State of Nebraska buses or trucks having a gross weight of the truck and load exceeding twelve thousand pounds unless such bus or truck is equipped with power brakes, auxiliary brakes, or some standard booster brake equipment. Any person; ~~partnership~~; or ~~limited liability company~~ who violates this section shall be guilty of a Class V misdemeanor.

Sec. 81. That section 60-6,291, Revised Statutes Supplement, 1993, be amended to read as follows:

60-6,291. Any person ~~who~~ or ~~limited liability company~~ that violates any provision of sections 60-6,288 to 60-6,290 or ~~that~~ who drives, moves, causes, or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to width, length, or height as provided in such sections for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

Sec. 82. That section 60-1411.02, Revised Statutes Supplement, 1993, be amended to read as follows:

60-1411.02. The board may, upon its own motion, and shall, upon a sworn complaint in writing of any person, investigate the actions of any person registered or licensed under Chapter 60, article 14, as a motor vehicle dealer, trailer dealer, motor vehicle or trailer salesperson, manufacturer, factory branch, distributor, factory representative, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, finance company, motorcycle dealer, or motor vehicle auction dealer or operating without a registration or license when such registration or license is required. The board shall have the power to deny any application for a license, to revoke or suspend a license, to place the licensee or registrant on probation, to assess an administrative fine in an amount not to exceed five thousand dollars per violation, or to take any combination of such actions if the applicant, registrant, or licensee including any officer, stockholder, partner, or limited liability company member or any person having any financial interest in the applicant, registrant, or licensee:

(1) Has had any license issued under Chapter 60, article 14, revoked or suspended and, if the license has been suspended, has not complied with the terms of suspension;

(2) Has knowingly purchased, sold, or done business in stolen motor vehicles, motorcycles, or trailers or parts therefor;

(3) Has failed to provide and maintain an established place of business as defined in section 60-1401.02;

(4) Has been found guilty of any felony which has not been pardoned, has been found guilty of any misdemeanor concerning fraud or conversion, or has suffered any judgment in any civil action involving fraud, misrepresentation, or conversion. In the event felony charges are pending against an applicant, the board may refuse to issue a license to the applicant until there has been a final determination of the charges;

(5) Has made a false material statement in his or her application or any data attached thereto;

(6) Has willfully failed to perform any written agreement with any consumer or retail buyer;

(7) Has made a fraudulent sale, transaction, or repossession, or created a fraudulent security interest, as defined in the Uniform Commercial Code, in a motor vehicle, trailer, or motorcycle;

(8) Has failed to notify the board of a change in the location of his or her established place or places of business and in the case of a salesperson has failed to notify the board of any change in his or her employment;

(9) Has willfully failed to deliver to a purchaser a proper certificate of ownership for a motor vehicle, trailer, or motorcycle sold by the licensee or to refund the full purchase price if the purchaser cannot legally obtain proper certification of ownership within thirty days;

(10) Has forged the signature of the registered or legal owner on a certificate of title;

(11) Has failed to comply with Chapter 60, article 14, and any orders, rules, or regulations of the board adopted and promulgated under Chapter 60, article 14;

(12) Has failed to comply with the advertising and selling standards established in section 60-1411.03;

(13) Has failed to comply with the provisions of section 60-320, Chapter 60, article 1 or 14, or the rules or regulations adopted and promulgated by the board pursuant to Chapter 60, article 14;

(14) Has failed to comply with any provision of Chapter 71, article 46, or with any code, standard, rule, or regulation adopted or made under the authority of or pursuant to the provisions of Chapter 71, article 46;

(15) Has willfully defrauded any retail buyer or other person in the conduct of the licensee's business;

(16) Has employed any unlicensed salesperson or salespersons;

(17) Has failed to comply with the provisions of sections 60-132 to 60-138;

(18) Has engaged in any unfair methods of competition or unfair or deceptive acts or practices prohibited under Chapter 87, article 3; or

(19) Has conspired, as defined in section 28-202, with other persons to process titles in violation of the provisions of Chapter 60, article 1.

If the applicant, registrant, or licensee is a publicly held corporation, the board's authority shall extend only to the corporation and its managing officers and directors.

Sec. 83. That section 66-729, Revised Statutes Supplement, 1993, be amended to read as follows:

66-729. After reviewing an application received in proper form, the department may issue to the applicant a permit or license. The department may refuse to issue a permit or license to any person:

(1) Who previously had a permit or license issued under the motor fuel laws of any state which, prior to the time of filing the application, has been suspended or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing the application, has been suspended or canceled for cause;

(3) Which has as a partner, limited liability company member, or shareholder, with a ten percent or larger ownership interest, any person who is unable to obtain a license or permit in his or her own name;

(4) Who is not in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(5) Who is not in compliance with the Department of Agriculture regarding weights and measures or the sealing of dispensing devices;

(6) Who has been convicted of a felony in the last ten years; or

(7) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant him or her at least ten days' written notice of the time and place.

Sec. 84. That section 67-248.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

67-248.02. (a) Pursuant to an agreement, one or more domestic or foreign limited partnerships, limited liability companies, or corporations may merge into or consolidate with one or more domestic or foreign limited partnerships, limited liability companies, or corporations. If the resulting entity is a domestic corporation the Nebraska Business Corporation Act shall govern the merger or consolidation. If the surviving or resulting entity is a corporation, the merger or consolidation shall be subject to section 21-2070

or 21-2071. If the surviving or resulting entity is not a domestic corporation or a limited liability company, the board of directors of each domestic corporation party to such merger or consolidation shall, by resolution adopted by each such board, approve a plan of merger or plan of consolidation setting forth information substantially similar to that required by section 21-2070 or 21-2071. If the surviving or resulting entity is a limited liability company, the Limited Liability Company Act shall govern the merger or consolidation. Unless otherwise provided in the partnership agreement, a plan of merger or plan of consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners and (2) by limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement or plan of merger or agreement or plan of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement or plan of merger or agreement or plan of consolidation.

(b) If the surviving or resulting entity is not a domestic limited partnership, limited liability company, or corporation following a merger or consolidation of one or more domestic limited partnerships, limited liability companies, or corporations and one or more foreign limited partnerships, limited liability companies, or corporations, the surviving or resulting entity shall comply with section 21-2076 and, for each such domestic limited partnership, a certificate shall be executed and filed in the office of the Secretary of State by the surviving or resulting limited partnership, limited liability company, or corporation stating that the surviving or resulting limited partnership, limited liability company, or corporation agrees that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(c) A merger or consolidation to which a domestic corporation is a party shall become effective as provided in section 21-2075. A merger or consolidation to which a domestic limited liability company is a party shall become effective as provided in sections 46 to 52 of this act. Any other merger or consolidation provided for in the Nebraska Uniform Limited Partnership Act shall become effective as provided in the agreement or plan of merger or consolidation. When such merger or consolidation has become effective, the terms of section 21-2075 shall apply if the surviving or resulting entity is a corporation, the terms of section 50 of this act shall apply if the surviving or resulting entity is a limited liability company, and the following provisions shall apply if the surviving or resulting entity is a limited partnership:

(1) The several limited partnerships, limited liability companies, or corporations which are parties to the merger or consolidation agreement shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation agreement;

(2) The separate existence of all limited partnerships, limited liability companies, and corporations which are parties to the merger or consolidation agreement, except the surviving or new limited partnership, shall cease;

(3) If the surviving or new limited partnership is a domestic limited partnership, it shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited partnership organized under the Nebraska Uniform Limited Partnership Act;

(4) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and, subject to the Nebraska Uniform Limited Partnership Act, each of the merging or consolidating corporations. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships, limited liability companies, and corporations as merged or consolidated shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating entities. The title to any real property or any interest in such property vested in any of such



merging or consolidating entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(5) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships, limited liability companies, or corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships, limited liability companies, or corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships, limited liability companies, or corporations shall be impaired by such merger or consolidation; and

(6) The equity securities of the corporation or corporations, limited liability company or companies, and limited partnership or limited partnerships party to the merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged shall cease to exist, and the holders of such equity securities shall thereafter be entitled only to the cash, property, or securities into which they shall have been converted in accordance with the terms of the merger or consolidation, subject to any rights under section 21-2079 or the Limited Liability Company Act.

Sec. 85. That section 67-251, Revised Statutes Supplement, 1993, be amended to read as follows:

67-251. (a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of his or her rights and powers as a limited partner, he or she participates in the control of the business. However, if the limited partner participates in the control of the business, he or she is liable only to persons who transact business with the limited partnership with actual knowledge of his or her participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner. An assignee of a partnership interest who is not admitted as an additional limited partner shall not be liable for the obligations of a limited partnership.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by virtue of possessing or exercising one or more of the following powers:

(1) The power to be an independent contractor for or to transact business with the limited partnership, including the power to be a contractor for or an agent or employee of the limited partnership or of a general partner, or to be an officer, director, ~~member~~, or equity security holder of a general partner which is a corporation, or to be a contractor for or an agent, employee, or member of a general partner which is a or limited liability company, or to be an officer, partner, or equity security holder of a general partner which is a partnership, or to be a fiduciary or beneficiary of an estate or trust which is a general partner, or any combination of these roles, whether solely or jointly with others and irrespective of whether that general partner is the sole general partner of the limited partnership or is a general partner of one or more limited partnerships;

(2) The power to consult with and advise a general partner with respect to any matter concerning the business of the limited partnership;

(3) The power to act as surety, guarantor, or endorser for the limited partnership or a general partner, to guaranty or assume one or more specific obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner, or to provide collateral for the limited partnership;

(4) The power to propose, approve, or disapprove by voting, by number, financial interest, class, or group or as otherwise provided in the partnership agreement, or otherwise vote on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership or an election to continue the limited partnership or an election to continue the business of the limited partnership;

(ii) The sale, exchange, lease, mortgage, assignment, pledge, or other transfer of or granting a security interest in any asset or assets of the limited partnership;

(iii) The incurrence, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(iv) A change in the nature of the business;

(v) The removal, admission, or retention of a general partner;

(vi) The removal, admission, or retention of a limited partner;

(vii) A transaction or other matter involving an actual or potential

conflict of interest;

(viii) An amendment to the partnership agreement or certificate of limited partnership;

(ix) The merger or consolidation of a limited partnership;

(x) In respect of a limited partnership which is registered as an investment company under the federal Investment Company Act of 1940, as amended, any matter required by the federal Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company, including the electing of directors or trustees of the investment company, the approving or terminating of investment advisory or underwriting contracts, and the approving of auditors;

(xi) The indemnification of any partner or other person; or

(xii) Such other matters as are stated in the partnership agreement or in any other agreement or writing as being subject to the approval or disapproval of limited partners;

(5) The power to call, request, attend, or participate at a meeting of the partners or the limited partners;

(6) The power to wind up a limited partnership pursuant to section 67-278;

(7) The power to take any action required or permitted by law to bring, pursue, settle, or otherwise terminate a derivative action in the right of the limited partnership;

(8) The power to serve on a committee of the limited partnership or the limited partners; or

(9) The power to exercise any right or power granted or permitted to limited partners under the Nebraska Uniform Limited Partnership Act and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him or her in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits his or her name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2) of section 67-234, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

(e) This section shall not create any rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement, or any other agreement or writing or by the Nebraska Uniform Limited Partnership Act.

Sec. 86. That section 71-2023, Revised Statutes Supplement, 1993, be amended to read as follows:

71-2023. The Department of Health shall issue licenses for the operation of health care facilities subject to sections 71-2017 to 71-2029 and the Nebraska Nursing Home Act which are found to comply with such sections or act and such rules and regulations as are lawfully adopted and promulgated by the department. As a condition for licensure or renewal of a license, such institutions shall submit to the department a list of the names of all individual owners, partners, limited liability company members, and members of boards of directors owning or managing such institutions and any other persons with financial interests or investments in such institutions. Every such licensed institution shall have a sign prominently posted in the lobby or entry area of such institution. Such sign shall be in the form of a printed card with a minimum height of twenty inches and a width of fourteen inches with each letter to be a minimum of one-fourth inch in height. The sign shall contain the name, street address, city, state, and zip code of all individual owners, partners, limited liability company members, and members of the board of directors owning or managing such institution, except that the name of any owner who owns less than five percent of the institution shall not be included on the sign.

The department may (1) deny, suspend, or revoke licenses of such health care facilities or (2) take other disciplinary measures against the license of any such health care facility, other than a hospital, on any of the following grounds:

(a) Violation of any of the provisions of sections 71-2017 to 71-2029 or the Nebraska Nursing Home Act or the rules and regulations lawfully adopted and promulgated pursuant thereto;

(b) Permitting, aiding, or abetting the commission of any unlawful act;

(c) Conduct or practices detrimental to the health or safety of patients, residents, and employees of the facility, except that this

subdivision shall not be construed to have any reference to healing practices authorized by law;

(d) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to such facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations promulgated by the Department on Aging; or

(e) Discrimination or retaliation against an employee or resident of any such facility who has presented a grievance or information to the office of the state long-term care ombudsman.

If the Department of Health determines to deny, suspend, or revoke a license, it shall send to the applicant or licensee, by either registered or certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, or revocation shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, requests a hearing in writing. Thereupon the applicant or licensee shall be given a fair hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 71-2027. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules and regulations.

Other disciplinary actions taken shall be in accordance with the applicable provisions of sections 71-2023.01 to 71-2023.07 or 71-6025 to 71-6031.

Sec. 87. That section 75-139.01, Revised Statutes Supplement, 1993, be amended to read as follows:

75-139.01. For purposes of sections 75-140 to 75-145, person shall mean any individual, corporation, governmental agency or subdivision, partnership, limited liability company, company, or association and any other legal or commercial entity including any common carrier and its owners, directors, officers, limited liability company members, agents, and employees.

Sec. 88. That section 75-909, Revised Statutes Supplement, 1993, be amended to read as follows:

75-909. Any person or partner, limited liability company member, officer, or agent of any person who knowingly and intentionally violates any of the provisions of the Grain Dealer Act shall be guilty of a Class IV felony and, in addition, shall be liable for any damages suffered as a result of such violation.

Sec. 89. That section 77-1201, Revised Statutes Supplement, 1993, be amended to read as follows:

77-1201. All tangible personal property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next regular assessment. A complete list of all taxable tangible personal property held or owned on the assessment date, except motor vehicles as defined in section 77-1238, shall be made as follows:

(1) Every person shall list all his or her tangible personal property as defined in section 77-105 having tax situs in the State of Nebraska;

(2) The tangible personal property of a minor child shall be listed by the following: (a) His or her guardian; (b) if he or she has no guardian, by his or her parent, if living; and (c) if neither parent is living, by the person having such property in charge;

(3) The tangible personal property of any other person under guardianship, by his or her guardian or, if he or she has no guardian, by the person having charge of such property;

(4) The tangible personal property of a person for whose benefit it is held in trust, by the trustee, and of the estate of a deceased person, by the personal representative or administrator;

(5) The tangible personal property of corporations the assets of which are in the hands of a receiver, by such a receiver;

(6) The tangible personal property of corporations, by the president or the proper agent or officer thereof;

(7) The tangible personal property of a firm or company, by a

partner, limited liability company member, or agent thereof;

(8) The tangible personal property of manufacturers and others in the hands of an agent, by and in the name of such agent; and

(9) All leased tangible personal property shall be reported, by itemizing each article, by lessor as owner or lessee as agent.

Sec. 90. That section 77-2730, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2730. (1) A resident individual and a resident estate or trust shall be allowed a credit against the income tax otherwise due for the amount of any income tax imposed on him or her for each taxable year commencing on or after January 1, 1983, by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to income tax under sections 77-2714 to 77-27,123.

(2) The credit provided under sections 77-2714 to 77-27,135 shall not exceed the proportion of the income tax otherwise due under such sections that the amount of the taxpayer's adjusted gross income or total income derived from sources in the other taxing jurisdiction bears to federal adjusted gross income or total federal income.

(3) For purposes of subsection (1) of this section, a resident individual, estate, or trust shall be deemed to have paid a portion of the income tax imposed by another state, a political subdivision thereof, or the District of Columbia on the income of any partnership, limited liability company, trust, or estate when such resident individual, estate, or trust is a partner, member, or beneficiary and (a) the income taxed is included in the federal taxable income of the resident individual, estate, or trust and (b) the taxation of such partnership, limited liability company, trust, or estate by the other state is inconsistent with the taxation of such entity under the Internal Revenue Code. The amount of income tax deemed paid by the resident individual, estate, or trust shall be the same percentage of the total tax paid by the entity as the income included in federal taxable income of the resident is to the total taxable income of the entity as computed for the other state.

Sec. 91. That section 77-27,188.01, Revised Statutes Supplement, 1993, be amended to read as follows:

77-27,188.01. (1) The credit allowed under section 77-27,188 may be used to obtain a refund of sales and use taxes paid or against the income tax liability of the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any sales or use taxes paid by a contractor on property annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska sales and use taxes paid on the materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska sales and use taxes were paid on all materials, may presume that fifty percent of the cost of the improvement was for materials annexed to real estate on which the tax was paid.

(5)(a) The credit shall be a nonrefundable credit when used against the income tax liability of the taxpayer. The credit shall be applied before any refundable credits are applied. Except as provided in subdivision (b) of this subsection, the amount of the credit that may be used in any taxable year shall not exceed fifty percent of the income tax liability of the taxpayer reduced by all other nonrefundable credits except the credits prescribed in section 77-4105.

(b) For any taxpayer receiving credit in an amount calculated pursuant to subsection (3) of section 77-27,188, the amount of the credit that may be used in any taxable year shall not exceed the amount of the income tax liability of the taxpayer reduced by all other nonrefundable credits except the credits prescribed in section 77-4105.

(6) The credit that is not used against liabilities incurred in the taxable year in which such credit was first allowable may be carried over and used against the liabilities incurred in the five immediately succeeding taxable years. The credits carried over shall be used in the order in which

they were first allowed and before any additional credit allowable in a current taxable year may be used.

(7) No claim for refund of sales and use taxes under this section may be filed prior to January 1, 1989.

(8) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary under section 77-27,194 may only be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

Sec. 92. That section 77-27,194, Revised Statutes Supplement, 1993, be amended to read as follows:

77-27,194. The credit allowed under the Employment Expansion and Investment Incentive Act shall not be transferable, except in the following situations:

(1) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, or an estate or trust shall be distributed to the partners, limited liability company members, shareholders, or beneficiaries in the same manner as income is distributed; and

(2) If a taxpayer operating a qualifying business and allowed a credit under section 77-27,188 dies and there is credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of credit may be changed only after obtaining the permission of the Tax Commissioner.

Sec. 93. That section 81-8,127, Revised Statutes Supplement, 1993, be amended to read as follows:

81-8,127. 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 sections 81-8,108 to 81-8,127 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.

Sec. 94. That section 88-543, Revised Statutes Supplement, 1993, be amended to read as follows:

88-543. No warehouse licensee or partner, limited liability company member, officer, or agent thereof shall issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts issued for grain, there shall be a presumption that the warehouse licensee or partner, limited liability company member, officer, or agent thereof has wrongfully removed grain, has wrongfully caused grain to be removed, or has issued receipts for grain not actually received, and has violated this section. Any warehouse licensee or partner, limited liability company member, officer, or agent thereof who knowingly and willingly violates this section shall be guilty of a Class IV felony.

Sec. 95. That section 88-545, Revised Statutes Supplement, 1993, be amended to read as follows:

88-545. The commission shall enforce the Grain Warehouse Act and shall adopt and promulgate rules and regulations to aid in the administration of the act. Any person or partner, limited liability company member, officer, or agent of any person who violates the Grain Warehouse Act shall be guilty of a Class IV felony, unless otherwise specifically provided, and shall be liable for any damages suffered by any person from such violation. Upon request of the commission, the Attorney General or any county attorney shall assist in the prosecution of any violations of the act.

Sec. 96. That original sections 2-1816, 2-1825, 2-2406, 21-2070, 21-2071, 21-2075, 21-2076, 48-125.01, 54-726.04, 54-761, 54-1510, 54-1802, and 67-248.02, Reissue Revised Statutes of Nebraska, 1943, section 54-1603, Revised Statutes Supplement, 1992, and sections 1-157, 1-168, 2-1091.01, 2-2624, 2-2635, 2-5002, 8-1101, 8-1102, 8-1103, 8-1109, 8-1118, 8-1717.01, 9-1,104, 9-620, 9-642, 9-826, 9-834, 21-2601, 21-2602, 21-2605, 21-2606, 21-2610, 21-2611, 21-2612, 21-2614, 21-2615, 21-2619, 21-2620, 21-2621, 21-2622, 21-2628, 21-2631, 21-2632, 21-2634, 25-1081, 28-613, 29-1507, 30-2717, 37-101, 44-2821, 44-2824, 44-2837, 44-32,125, 44-5903, 48-115, 48-652, 48-1704, 49-1408, 54-1902, 54-2001, 59-812, 59-814, 59-1735, 59-1739, 60-348, 60-6,247, 60-6,291, 60-1411.02, 66-729, 67-251, 71-2023, 75-139.01, 75-909, 77-1201, 77-2730, 77-27,188.01, 77-27,194, 81-8,127, 88-543, and 88-545, Revised Statutes Supplement, 1993, are repealed.

Sec. 97. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.