

LEGISLATIVE BILL 1115

Approved by the Governor March 16, 2006

Introduced by Bourne, 8

AN ACT relating to legal processes and reporting; to amend sections 25-214, 25-302, 25-307, 25-308, 25-316, 25-322, 25-325, 25-326, 25-329, 25-2009, 29-812, 29-814.01, 30-2603, 42-108, 42-116, 42-371.01, 43-247, 43-2,129, 43-1314, 44-3311, 71-507, 71-510, 84-915.01, and 84-917, Reissue Revised Statutes of Nebraska, sections 25-2720.01, 29-4202, 29-4203, 29-4204, 29-4205, 29-4206, 29-4207, 71-612, and 71-628, Revised Statutes Cumulative Supplement, 2004, and section 71-601.01, Revised Statutes Supplement, 2005; to adopt the Uniform Conflict of Laws Limitations Act; to change and eliminate provisions relating to civil actions, courts, search warrants, audiovisual court appearances, payments to minors, marriage ceremonies, foster care placements, and reporting regarding lawyers; to provide for abstracts of marriage, reporting of exposure to infectious diseases, waiver of sovereign immunity, and agency records and modification of findings and decisions in contested administrative cases; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal section 25-215, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Uniform Conflict of Laws Limitations Act.

Sec. 2. For purposes of the Uniform Conflict of Laws Limitations Act:

(1) Claim means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute;

(2) State means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them; and

(3) Resident means an individual who is domiciled in this state, a corporation that is either incorporated or has its principal place of business in this state, or an unincorporated entity that has its principal place of business in this state.

Sec. 3. (1)(a) Except as provided by section 5 of this act and subsection (2) of this section, if a claim is substantively based:

(i) Upon the law of one other state, the limitation period of that state applies; or

(ii) Upon the law of more than one state, the limitation period of one of those states chosen by the law of conflict of laws of this state applies.

(b) The limitation period of this state applies to all other claims.

(2) If a cause of action arises outside of this state and the action is barred under the applicable statute of limitations of the place where it arose, the action may be maintained in this state if the plaintiff is a resident of this state who has owned the cause of action since it accrued and the cause of action is not barred under the applicable statute of limitations of this state.

Sec. 4. If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply.

Sec. 5. If the court determines that the limitation period of another state applicable under section 3 or 4 of this act is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies.

Sec. 6. The Uniform Conflict of Laws Limitations Act applies to claims accruing after the operative date of this section.

Sec. 7. The Uniform Conflict of Laws Limitations Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Conflict of Laws Limitations Act among states enacting it.

Sec. 8. Section 25-214, Reissue Revised Statutes of Nebraska, is amended to read:

25-214 If, ~~when~~ a cause of action accrues against a person, ~~while~~

he or she is out of the state, ~~or shall have or has~~ absconded or concealed himself or herself, the period limited for the commencement of the action shall not begin to run (1) until he or she comes into the state, or (2) while he or she is absconded or concealed. If the person, and if, after the cause of action accrues, he departs from the state, or absconds or conceals himself or herself after the cause of action accrues, the time of his or her absence or concealment shall not be computed as any part of the period within which the action must be brought.

Sec. 9. Section 25-302, Reissue Revised Statutes of Nebraska, is amended to read:

25-302 The assignee of a thing in action may maintain an action thereon in ~~his~~ the assignee's own name and behalf, without the name of the assignor.

Sec. 10. Section 25-307, Reissue Revised Statutes of Nebraska, is amended to read:

25-307 Except as provided by the Nebraska Probate Code, the action of an infant shall be commenced, maintained, and prosecuted by his or her guardian or next friend. Such actions may be dismissed with or without prejudice by the guardian or next friend only with approval of the court. When the action is commenced by his or her next friend, the court has power to dismiss it, if it is not for the benefit of the infant, ~~or~~ to substitute the guardian of the infant, or any person, as the next friend. Any action taken pursuant to this section shall be binding upon the infant.

Sec. 11. Section 25-308, Reissue Revised Statutes of Nebraska, is amended to read:

25-308 The guardian, conservator, or next friend is liable for the costs of the action brought by ~~him~~ the guardian, conservator, or next friend, and, when he or she is insolvent, the court may require security for ~~them~~ the costs of the action. The guardian, conservator, or next friend may be a witness in an action brought by ~~him~~ the guardian, conservator, or next friend.

Sec. 12. Section 25-316, Reissue Revised Statutes of Nebraska, is amended to read:

25-316 If the plaintiff, in any judgment so rendered against any company or partnership, ~~shall seek~~ seeks to charge the individual property of the persons composing such company or firm, it shall be lawful for ~~him~~ the plaintiff to file a bill in equity against the several members thereof, setting forth his or her judgment and the insufficiency of the partnership property to satisfy the same, and to have a decree for the debt, and an award of execution against all such persons, or any of them as may appear to have been members of such company, association, or firm.

Sec. 13. Section 25-322, Reissue Revised Statutes of Nebraska, is amended to read:

25-322 An action does not abate by the death or other disability of a party, or by the transfer of any interest therein during its pendency, if the cause of action ~~survive or continue~~ survives or continues. In the case of the death or other disability of a party, the court may allow the action to continue by or against his or her representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

Sec. 14. Section 25-325, Reissue Revised Statutes of Nebraska, is amended to read:

25-325 Upon the affidavit of a defendant, before answer in an action upon contract or for the recovery of personal property, that some third party, without collusion with ~~him~~ the defendant, has or makes a claim to the subject of the action, and that ~~he~~ the defendant is ready to pay or dispose of the same as the court may direct, the court may make an order for the safekeeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his or her claim against the defendant. If such third party, being served with a copy of the order by the sheriff or such other person as the court may direct, ~~fail~~ fails to appear, the court may declare ~~him~~ such third party barred of all claim in respect to the subject of the action against the defendant therein. If such third party ~~appear~~ appears, he or she shall be allowed to make himself or herself the defendant in the action in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon ~~his~~ compliance by the defendant with the order of the court for the payment, deposit, or delivery thereof.

Sec. 15. Section 25-326, Reissue Revised Statutes of Nebraska, is amended to read:

25-326 The provisions of section 25-325 shall be applicable to an

action brought against a sheriff, or other officer, for the recovery of personal property taken by him or her under execution, or for the proceeds of such property so taken and sold by him or her. The defendant in such action shall be entitled to the benefit of those provisions against the party in whose favor the execution issued, upon exhibiting to the court the process under which he the defendant acted, with his or her affidavit that the property, ~~for the recovery of which,~~ or its proceeds, ~~the action is brought,~~ was taken under such process.

Sec. 16. Section 25-329, Reissue Revised Statutes of Nebraska, is amended to read:

25-329 The court shall determine upon the intervention at the same time that the action is decided, and if the claim of the intervenor is not sustained, the intervenor ~~he~~ shall pay all costs of the intervention.

Sec. 17. Section 25-2009, Reissue Revised Statutes of Nebraska, is amended to read:

25-2009 The provisions of ~~this chapter~~ Chapter 25 shall apply to the Supreme Court, Court of Appeals, and county court, so far as the same may be applicable to the judgments or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings; and in estimating time, the county court shall, for such purpose, be considered as holding, in each year, a regular term of court commencing on ~~the first Monday of each calendar month~~ January 1.

Sec. 18. Section 25-2720.01, Revised Statutes Cumulative Supplement, 2004, is amended to read:

25-2720.01 The county court, including the county court when sitting as a juvenile court, shall have the power to set aside default judgments and to vacate or modify its own judgments or orders during or after the term at which such judgments or orders were made in the same manner as provided for actions filed in the district court.

Sec. 19. Section 29-812, Reissue Revised Statutes of Nebraska, is amended to read:

29-812 A search warrant authorized by sections 29-812 to 29-821 may be issued by any judge of the county court, district court, Court of Appeals, or Supreme Court for execution anywhere within the State of Nebraska. A similar search warrant authorized by such sections may be issued, by any judge of the county court within his or her district or, subject to section 24-519, by any clerk magistrate within the county in which the property sought is located.

Sec. 20. Section 29-814.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-814.01 A search warrant may be issued under section 29-814.04 pursuant to written affidavit sworn to before a magistrate, a ~~or~~ judge, or any other person authorized to administer oaths under the laws of this state by the person making it. Such affidavit shall particularly describe the persons or places to be searched and the persons or property to be seized. Such affidavit shall set forth the facts and circumstances tending to show that such person or property is in the place, or the property is in the possession of the person, to be searched. Such affidavit may be submitted to the magistrate or judge in person or by facsimile or other electronic means and the warrant may be issued to the affiant in person or by facsimile or other electronic means.

Sec. 21. Section 29-4202, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4202 (1) Except for trials, when the appearance of a detainee or prisoner is required in any court at a nonevidentiary criminal proceeding, the detainee or prisoner may make an audiovisual court appearance. However, a judge or magistrate is not required to allow an audiovisual court appearance and may order the detainee or prisoner to appear physically in the courtroom.

(2) An audiovisual court appearance shall meet the conditions required by sections 29-4201 to 29-4207.

Sec. 22. Section 29-4203, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4203 When an audiovisual court appearance is made:

(1) The detainee or prisoner shall sign a written consent and waiver of his or her right to a physical personal appearance at the proceeding;

(2) The judge or magistrate shall verify the written consent and waiver and obtain an oral waiver of the detainee's or prisoner's right to a physical personal appearance at the commencement of the proceeding; and

~~(3) A transcribed record and a videotape of the proceeding shall be made; and~~

~~(4)~~ (3) The audiovisual communication system and the facilities shall meet the requirements of section 29-4204.

Sec. 23. Section 29-4204, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4204 The audiovisual communication system and the facilities for an audiovisual court appearance shall:

(1) Operate so that the detainee or prisoner and the judge or magistrate can see each other simultaneously and converse with each other verbally and documents can be transmitted by ~~facsimile equipment~~ between the judge or magistrate and the detainee or prisoner;

(2) Operate so that the detainee or prisoner and his or her counsel, if any, are both physically in the same location during the audiovisual court appearance; or if the detainee or prisoner waives the right to have counsel physically present and the detainee or prisoner and his or her counsel are in different locations, operate so that the detainee or prisoner and counsel can communicate privately and confidentially by way of telephone and be allowed to confidentially ~~fax~~ transmit papers back and forth; and

(3) Be at locations conducive to judicial proceedings. Audiovisual court proceedings may be conducted in the courtroom, the judge's or magistrate's chambers, or any other location suitable for audiovisual communications. The locations shall be sufficiently lighted for use of the audiovisual equipment. The location provided for the judge or magistrate to preside shall be accessible to the public and shall be operated so that interested persons have an opportunity to observe the proceeding. + and

~~(4) Have at least two video cameras, one to record the detainee or prisoner and one to record the judge or magistrate. The cameras must also be capable of recording counsel and witnesses as necessary. There shall be at least two television monitors so that the detainee or prisoner and the judge or magistrate can observe the proceeding at each other's location simultaneously. There shall be facsimile equipment at both the detainee's or prisoner's location and at the judge's or magistrate's location.~~

Sec. 24. Section 29-4205, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4205 In a proceeding in which an audiovisual court appearance is made:

(1) Facsimile signatures or electronically reproduced signatures are acceptable for purposes of releasing the detainee or prisoner from custody; however, actual signed copies of the release documents must be promptly filed with the court and the detainee or prisoner must promptly be provided with a copy of all documents which the detainee or prisoner signs; and

~~(2) A copy of the videotape of such proceeding shall be made upon written request of the detainee or prisoner or the prosecutor if the request is received by the court within thirty days of the date of the proceeding. The original videotape may be destroyed one year after the date of the proceeding unless an appeal is taken, in which case the original videotape shall be preserved until all appeals are concluded.~~

(2) The audiovisual appearance shall not be videotaped. The record of the court reporter or stenographer shall be the official and sole record of the proceeding; and

(3) On motion of the ~~defendant~~ detainee or prisoner or the prosecuting attorney or in the court's discretion, the court may terminate an audiovisual appearance and require an appearance by the detainee or prisoner.

Sec. 25. Section 29-4206, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4206 The district courts may accept a written waiver of arraignment and plea of not guilty from any defendant. arraignments in writing if the detainee or prisoner has entered a not guilty plea in county court. The ~~arraignment~~ form shall contain the necessary consent and waiver of the right to a physical appearance, and shall be signed by the detainee or prisoner defendant and his or her counsel of record, if any, and shall be filed with the clerk of the court.

Sec. 26. Section 29-4207, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4207 The Supreme Court ~~shall~~ may promulgate rules of practice and procedure for implementation of sections 29-4201 to 29-4207.

Sec. 27. Section 30-2603, Reissue Revised Statutes of Nebraska, is amended to read:

30-2603 Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding ~~ten~~ twenty-five thousand dollars per annum, by paying or delivering the money or property to:

(1) The minor, if he or she has attained the age of eighteen years or is married;

(2) Any person having the care and custody of the minor with whom

the minor resides;

(3) A guardian of the minor; or

(4) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under subdivision (4) of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he or she attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Sec. 28. Section 42-108, Reissue Revised Statutes of Nebraska, is amended to read:

42-108 Every judge, retired judge, ~~or~~ clerk magistrate, or retired clerk magistrate, and every preacher of the gospel authorized by the usages of the church to which he or she belongs to solemnize marriages, may perform the marriage ceremony in this state. Every such person performing the marriage ceremony shall make a return of his or her proceedings in the premises, showing the names and residences of at least two witnesses who were present at such marriage. The return shall be made to the county clerk who issued the license within fifteen days after such marriage has been performed. The county clerk shall record the return or cause it to be recorded in the same book where the marriage license is recorded.

Sec. 29. Section 42-116, Reissue Revised Statutes of Nebraska, is amended to read:

42-116 The original certificate and record of marriage made by the minister, officer, or person, as prescribed in sections 42-101 to 42-117, and the record thereof, made as prescribed, ~~or~~ a copy of such record, duly certified by such officer, or an abstract of marriage as defined in section 71-601.01, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Sec. 30. Section 42-371.01, Reissue Revised Statutes of Nebraska, is amended to read:

42-371.01 (1) An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

(2) The termination of child support does not relieve the obligor from the duty to pay any unpaid child support obligations owed or in arrears.

(3) The obligor may provide written application for termination of a child support order when the child being supported reaches nineteen years of age, marries, dies, or is otherwise emancipated. The application shall be filed with the clerk of the district court where child support was ordered. A certified copy of the birth certificate, marriage license, death certificate, or court order of emancipation or an abstract of marriage as defined in section 71-601.01 shall accompany the application for termination of the child support. The clerk of the district court shall send notice of the filing of the child support termination application to the last-known address of the obligee. The notice shall inform the obligee that if he or she does not file a written objection within thirty days after the date the notice was mailed, child support may be terminated without further notice. The court shall terminate child support if no written objection has been filed within thirty days after the date the clerk's notice to the obligee was mailed, the forms and procedures have been complied with, and the court believes that a hearing on the matter is not required.

(4) The State Court Administrator shall develop uniform procedures and forms to be used to terminate child support.

Sec. 31. Section 43-247, Reissue Revised Statutes of Nebraska, is amended to read:

43-247 The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), (6), and (8) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned

the juvenile court action occurred. The juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, any juvenile defined in subdivision (4) of this section, and any proceeding under subdivision (7) or (11) of this section. The juvenile court shall have concurrent original jurisdiction with the county court as to any proceeding under subdivision (9) or (10) of this section. Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian who has custody of any juvenile described in this section;

(6) The proceedings for termination of parental rights as provided in the Nebraska Juvenile Code;

(7) The proceedings for termination of parental rights as provided in section 42-364;

(8) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(9) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;

(10) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code; and

(11) The paternity determination for a child over which the juvenile court already has jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

Sec. 32. Section 43-2,129, Reissue Revised Statutes of Nebraska, is amended to read:

43-2,129 Sections 43-245 to 43-2,129 and section 33 of this act shall be known and may be cited as the Nebraska Juvenile Code.

Sec. 33. The separate juvenile court and the county court sitting as a juvenile court shall have the power to vacate or modify its own judgments or orders during or after the term at which such judgments or orders were made in the same manner as provided for actions filed in the district court.

Sec. 34. Section 43-1314, Reissue Revised Statutes of Nebraska, is amended to read:

43-1314 Except as otherwise provided in the Nebraska Indian Child

Welfare Act, notice of the court review and the right of participation in all court reviews pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement either in court, by mail, or in such other manner as the court may direct. Such notice shall be provided to all of the following that are applicable to the case: (1) The person charged with the care of such child; (2) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (3) the foster child if age fourteen or over; (4) the foster parent or parents of the foster child; (5) the guardian ad litem of the foster child; and (6) the state board; ~~(7) - Notice of the court review shall also be provided to the preadoptive parent; and (8) the ex~~ relative providing care for the child. Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative be made is a necessary party to the review. The court may inquire into the well-being of the foster child by asking questions of the foster parent, preadoptive parent, or relative providing care for the child. solely on the basis of such notice and opportunity to be heard.

Sec. 35. Section 44-3311, Reissue Revised Statutes of Nebraska, is amended to read:

44-3311 The director shall report to the Counsel for Discipline of the Nebraska Supreme Court any information of possible instances of overcharging for legal services, incompetence, or violations of the ~~code of~~ professional responsibility Nebraska Rules of Professional Conduct by lawyers who provide services in connection with a legal expense insurance policy.

Sec. 36. Section 71-507, Reissue Revised Statutes of Nebraska, is amended to read:

71-507 For purposes of sections 71-507 to 71-513:

(1) Alternate facility means a facility other than a health care facility that receives a patient transported to the facility by an emergency services provider;

(2) Department means the Department of Health and Human Services Regulation and Licensure;

(3) Designated physician means the physician representing the emergency services provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition. Each emergency services provider shall designate a physician as provided in subsection (2) of section 71-509;

(4) Emergency services provider means an out-of-hospital emergency care provider certified pursuant to the Emergency Medical Services Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a funeral director, a paid or volunteer firefighter, a school district employee, and a person rendering emergency care gratuitously as described in section 25-21,186;

(5) Funeral director means a person licensed under section 71-1302 or an employee of such a person with responsibility for transport or handling of a deceased human;

(6) Funeral establishment means a business licensed under section 71-1327;

(7) Health care facility has the meaning found in sections 71-419, 71-420, 71-424, and 71-429 or any facility that receives patients of emergencies who are transported to the facility by emergency services providers;

(8) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, diphtheria, plague, hemorrhagic fevers, rabies, and such other diseases as the department may by rule and regulation specify;

(9) Patient means an individual who is sick, injured, wounded, deceased, or otherwise helpless or incapacitated;

(10) Patient's attending physician means the physician having the primary responsibility for the patient as indicated on the records of a health care facility;

(11) Provider agency means any law enforcement agency, fire department, emergency medical service, funeral establishment, or other entity which employs or directs emergency services providers or public safety officials;

(12) Public safety official means a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a paid or volunteer firefighter, a school district employee, and any civilian law enforcement employee or volunteer performing his or her duties, other than those as an

emergency services provider;

(13) Responsible person means an individual who has been designated by an alternate facility to carry out the facility's responsibilities under sections 71-507 to 71-513. A responsible person may be designated on a case-by-case basis;

(14) Significant exposure means a situation in which the body fluids, including blood, saliva, urine, respiratory secretions, or feces, of a patient or individual have entered the body of an emergency services provider or public safety official through a body opening including the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's or individual's body fluids may have entered the emergency services provider's or public safety official's body or when an airborne pathogen may have been transmitted from the patient or individual to the emergency services provider or public safety official; and

(15) Significant exposure report form means the form used by the emergency services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

Sec. 37. Section 71-510, Reissue Revised Statutes of Nebraska, is amended to read:

71-510 (1) The patient or individual shall be informed that he or she has the right to consent to the test for presence of an infectious disease or condition and that if the patient or individual refuses the test, such refusal will be communicated to the emergency services provider or public safety official.

(2) If the patient or individual is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's or individual's next of kin or legal guardian.

(3) If an emergency services provider has a significant exposure which, in the opinion of the designated physician, could involve the transmission of hepatitis B, hepatitis C, or human immunodeficiency virus, the patient's attending physician shall initiate the necessary diagnostic blood tests of the patient. If the patient or patient's representative refuses to grant consent for such test and a sample of the patient's blood is available, the blood shall be tested for hepatitis B, hepatitis C, or human immunodeficiency virus. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency services provider. The emergency services provider may petition the district court for an order mandating that the test be performed.

(4) If a public safety official believes he or she has had a significant exposure while performing his or her duties, other than those as an emergency services provider, which, in the opinion of a physician, could involve exposure to an infectious disease or condition, the public safety official or the provider agency which employs or directs him or her may (a) request the individual who may have transmitted the infectious disease or condition to consent to having the necessary diagnostic blood tests performed or (b) if the individual refuses to consent to such tests, petition the district court for an order mandating that the necessary diagnostic blood tests of such individual be performed.

(5) If a patient or individual is deceased, no consent shall be required to test for the presence of an infectious disease or condition.

(6) If the State of Nebraska serves as guardian for the patient or individual and refuses to grant consent to test for the presence of an infectious disease or condition, the state as guardian (a) shall be subject to the jurisdiction of the district court upon the filing of a petition for an order mandating that the test be performed and (b) shall not have sovereign immunity in such suit or proceeding.

Sec. 38. Section 71-601.01, Revised Statutes Supplement, 2005, is amended to read:

71-601.01 For purposes of the Vital Statistics Act:

(1) Abstract of marriage means a certified document that summarizes the facts of marriage, including, but not limited to, the name of the bride and groom, the date of the marriage, the place of the marriage, and the name of the office filing the original marriage license. An abstract of marriage does not include signatures;

(2) Certificate means the record of a vital event;

~~(2)~~ (3) Certification means the process of recording, filing, amending, or preserving a certificate, which process may be by any means, including, but not limited to, microfilm, electronic, imaging, photographic, typewritten, or other means designated by the department; and

~~(3)~~ (4) Department means the Department of Health and Human Services Finance and Support.

Sec. 39. Section 71-612, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-612 (1) The Director of Finance and Support, as the State Registrar, through the Department of Health and Human Services Finance and Support shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage registered or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of seven dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of (a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or (b) the Military Department.

(3) The Department of Health and Human Services Finance and Support may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the Director of Finance and Support it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Department of Health and Human Services Finance and Support Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any inhospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed two dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established

city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

Sec. 40. Section 71-628, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-628 In case of the legitimation of any child born in Nebraska by the subsequent marriage of such child's parents as provided in section 43-1406, the Department of Health and Human Services Finance and Support, upon the receipt of a certified copy of the marriage certificate or abstract of marriage of the parents and a statement of the parents acknowledging paternity, shall prepare a new certificate of birth in the new name of the child so legitimated, in substantially the same form as that used for other live births, and shall charge a filing fee of seven dollars. All such fees shall be remitted to the State Treasurer for credit to the Department of Health and Human Services Finance and Support Cash Fund. The department shall charge and collect an additional fee of one dollar for each new certificate of birth filed. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

Sec. 41. Section 84-915.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-915.01 (1) An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

(2) The agency record shall consist only of:

(a) Notices of all proceedings;

(b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;

(c) The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and

(d) The final order.

(3) Except as otherwise provided by law, the physical custody of the agency record shall be maintained by the agency. The agency shall permit the parties to inspect the agency record and obtain copies of the agency record.

~~(3)~~ (4) ~~Except to the extent that the act or another statute provides as otherwise provided by law,~~ the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

Sec. 42. Section 84-917, Reissue Revised Statutes of Nebraska, is amended to read:

84-917 (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue

together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

~~(b)~~ (b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with section 25-534 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

- (i) In violation of constitutional provisions;
- (ii) In excess of the statutory authority or jurisdiction of the agency;
- (iii) Made upon unlawful procedure;
- (iv) Affected by other error of law;
- (v) Unsupported by competent, material, and substantial evidence in

view of the entire record as made on review; or

(vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

Sec. 43. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, 37, 41, 42, 44, and 47 of this act become operative three calendar months after adjournment of this legislative session. Sections 29, 30, 38, 39, 40, and 45 of this act become operative on January 1, 2007. The other sections of this act become operative on their effective date.

Sec. 44. Original sections 25-214, 25-302, 25-307, 25-308, 25-316, 25-322, 25-325, 25-326, 25-329, 25-2009, 29-812, 29-814.01, 30-2603, 43-247, 43-2,129, 43-1314, 44-3311, 71-507, 71-510, 84-915.01, and 84-917, Reissue Revised Statutes of Nebraska, and sections 25-2720.01, 29-4202, 29-4203, 29-4204, 29-4205, 29-4206, and 29-4207, Revised Statutes Cumulative Supplement, 2004, are repealed.

Sec. 45. Original sections 42-116 and 42-371.01, Reissue Revised Statutes of Nebraska, sections 71-612 and 71-628, Revised Statutes Cumulative Supplement, 2004, and section 71-601.01, Revised Statutes Supplement, 2005, are repealed.

Sec. 46. Original section 42-108, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 47. The following section is outright repealed: Section 25-215, Reissue Revised Statutes of Nebraska.

Sec. 48. Since an emergency exists, this act takes effect when passed and approved according to law.